RE_ FHP Memo V6.rtf

RE_ In advance of Wednesday’s call with the IESO.rtf

From: Jeannette Briggs [jeannette.briggs@ieso.ca]
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: In advance of Wednesday's call with the IESO
Date: Wednesday, June 28, 2017 08:27:50
Attachment 1: IMO-Charge-Types-and-Equations.pdf

In advance just sending our charge type and equation document which is available at the following
link: http://www.ieso.ca/-/media/files/ieso/document-library/market-rules-and-manuals-library/market-manuals/settlements/imo-charge-types-and-equations.pdf

I will make reference to it in order to answer your questions around uplifts.

Regards,

Jeannette Briggs Director, Settlements - Corporate Services

Independent Electricity System Operator (IESO)| T: 905-855-6364 | C: 416-997-6364

Station A, Box 4474, Toronto, ON, M5W 4E5

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: June 28, 2017 2:25 AM
To: Jeannette Briggs
Cc: Petsche, Nadine (TBS)
Subject: FW: In advance of Wednesday's call with the IESO

Hi Jeannette,

Thank you for this. Your responses are very helpful.

I made some notes to myself (in blue) in the e-mail below. Since they will guide some of my questions on our call, I thought I would share them with you for reference.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Jeannette Briggs [mailto:jeannette.briggs@ieso.ca]
Sent: Monday, June 26, 2017 5:01 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Nadine.Petsche@ontario.ca
Subject: In advance of Wednesday's call with the IESO

LeeAnne,

Here are the responses to your questions on Market Settlement. Susan Nicholson will answer the questions around accounting verbally. However, given the number of questions you had on settlement related issues, I thought it would be better to provide written responses. Of course, I am happy to discuss them further with you.

Market Administration/Settlement

Confirm/correct the following - see responses below :

Price IESO Market Participants pay comprised of:

- Electricity price:

· Electricity commodity price (HOEP) Non-dispatchable loads pay HOEP, Dispatchable loads pay MCP

· Global Adjustment Do all loads pay GA or only non-dispatchable loads paying HOEP?

- Wholesale Market Services Charges (includes IESO fee, Hourly, and Non-hourly Uplifts What are uplifts? How are they determined?, Government Programs Smart meters, for example, DR What is DR?, IESO fee)

- Transmission price

- Debt Retirement Charge

Note LDC's have "customers" and this is where you find Distribution charges and no DRC for residential customers Why is there no DRC for residential customers?, IESO's Wholesale Market Service Charge is called Wholesale Market Service Rate which is set annually by the OEB (each component set separately?) to be charged by LDC under their tariff to customers. LDCs pay the IESO Administered Market charges as invoiced and recover from customers through their approved OEB rates and tariffs. Differences in RPP (are all LDC customers RPP customers?)

collections verses commodity costs paid to the IESO are submitted monthly to the IESO to be included as a separate line set-offs to LDC invoices and the IESO holds the variance (debit/credit) Doesn't the HOEP rate flow through to consumers?

.

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment – not sure what "only settles" see above we settle significantly more than commodity price component – in 2016 we settled $17.2B

Supply of electricity comes from:

Dispatchable generators – paid MCP

Non-dispatchable generators – paid MCP

I don't understand how the contracts work and what generators are under contract

1. OPG (paid 5 minute market clearing price (MCP) but settled for difference on the regulated rate set by OEB).

2. Non-utility generators (paid MCP when injecting and settled for differences. Financial settlement set by contract – contracts held by OEFC and the IESO)

3. Generation facilities including Bruce Power under contract with IESO (paid MCP when injecting and settled for differences - financial settlement set by contract)

4. Imports (paid HOEP or and under contract as in Hydro Quebec contract)

Are there are other suppliers that are paid HOEP? Fit and Micro-Fit which would not be "generation facilities" necessarily and often embedded within a LDC, merchant generators that are not under contract, a few NUGs that have not renewed contracts may be in this category too,

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 and other contracted supply above: 95.8%

What is the nature of the contracts IESO enters into? There are contracts within the IESO Administered Market for services such Ancillary Services (What is this? Does it make up part of the IESO fee?) and financial contracts for supply capacity that are not part of the IESO Administered Market but funded through GA. I don't understand this. Why are they not part of the IESO Administered Market?

Participation agreements

· IESO enters into participation agreements with all market participants (buyers and sellers) Yes PAs are entered for the IESO Administered Markets but we also have participation agreement with program participants, adherence to market rules is restricted for these MPs to rules around programs i.e. not all MRs are applicable.

· Participation agreements bind IESO and counterparty to follow market rules Yes as it relates to the IESO Administered Markets including ancillary services contracts. This has nothing to do with participants who are under supply contracts where IESO is counterparty. I don't understand this.

· Participation agreement would be the only contract IESO enters into with #1, #2, #4 above No if you are participating in the IESO Administered Markets you are a registered MPs with a PA. Unrelated, the same participant may have a separate **financial agreement** and contract with the IESO as counterparty. These are two separate and distinct treatments and should not be confused. In fact the IESO under Electricity Act has an object that there is effective separation between these two functions.

Supply contracts

· Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?) No we do not pay for supply of electricity through contracts. We contract for services within the IESO Administered Market all well defined in the market rules. All other contracts are financial contracts for capacity – this does not tie to any commitment within the IESO Administered Markets for the supply of electricity. The IESO administers a competitive transparent market based on bids/offers for consumption and regulation market I don't understand this

· Does the IESO negotiate the terms of these contracts? Policy is set by the Ministry of Energy in the form of directives and IESO implements the directives through financial contracts.

Buyers of electricity from IESO grid are comprised of:

· LDCs All LDCs are non-dispatchable loads

· Directly connected participants (do not necessarily need to large but typically are larger to make sense to be an MP) Directly connected participants can be dispatchable or non-dispatchable loads

The electricity commodity price paid by all buyers is HOEP. No, dispatchable loads pay MCP. There is an algorithm that determines MCP every 5 minutes based on supply/demand, bids/offers and the 12 MCPs create Hourly Ontario Energy Price (HOEP).

Non-dispatchable loads (which includes distributors, as well as municipalities, hospitals and large factories) pay HOEP

Dispatchable loads pay MCP

Although IESO determines HOEP, IESO is not really determining rates charged to

buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost. The IESO settles the IESO Administered Market including MCP/HOEP, GA for Class A and Class B (does this cover all of the GA?), the amount for WSMC, and Transmission which are all billed to MPs (dispatchable and non-dispatchable loads?) including LDC based on their measured quantities of their delivery point meters registered with the IESO. I believe you are making reference to RPP customers of LDCs (what other types of customers does a LDC have?) which the OEB creates an RPP rate (Tier 1/ Tier 2, for conventional meters) and TOU (for smart meters) that over time (currently 6 months) adds to what the LDCs will pay the IESO for commodity (HOEP plus GA). Happy to explain further if unclear. Yes, please.

Regards,

Jeannette Briggs Director, Settlements - Corporate Services

Independent Electricity System Operator (IESO)| T: 905-855-6364 | C: 416-997-6364

Station A, Box 4474, Toronto, ON, M5W 4E5

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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LIST

IESO Charge Types and Equations

Issue 61.0

This document enumerates the various charge types and equations used in the IESO settlements process for IESO-Administered markets that are subject to a functional deferral, and those that are NOT subject to a functional deferral.

Disclaimer

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This document may contain a summary of a particular *market rule*. Where provided, the summary has been used because of the length of the *market rule* itself. The reader should be aware, however, that where a *market rule* is applicable, the obligation that needs to be met is as stated in the "Market Rules". To the extent of any discrepancy or inconsistency between the provisions of a particular *market rule* and the summary, the provision of the *market rule* shall govern.

Document ID	IMP_LST_0001
Document Name	IESO Charge Types and Equations
Issue	Issue 61.0
Reason for Issue	Updated for Baseline 37.0
Effective Date	March 1, 2017

Document Change History

Issue	Reason for Issue	Date
• For change history prior to Issue 22.0, see Issue 29.0 of the CT&E. • For change history for Issue 22.0 to Issue 29.0, see Issue 38.0 of the CT&E. • For change history for Issue 30.0 to Issue 48.0, See Issue 59.0 of the CT&E		
49.0	Updated for Baseline 29.1. Added changes associated with IMDC-3 "Smart Metering Charge".	June 5, 2013
50.0	Updated for Baseline 30.0	September 11, 2013
51.0	Updated for Baseline 30.1	December 4, 2013
52.0	Update for Baseline 31.1	June 4, 2014
53.0	Update for Baseline 32.0	September 10, 2014
54.0	Updated for Baseline 33.0	March 4, 2015
55.0	Updated for Baseline 34.0	September 9, 2015
56.0	Updated for Baseline 34.1	December 2, 2015
57.0	Updated for Baseline 35.0	March 2, 2016
58.0	Updated for Baseline 35.1	June 1, 2016
59.0	Updated for Baseline 36.0	September 14, 2016
60.0	Updated for Baseline 36.1	December 7, 2016
61.0	Updated for Baseline 37.0	March 1, 2017

Related Documents

Document ID	Document Title
IMO_GDE_0002	HST Guide for IESO Transactions
IMP_SPEC_0005	Format Specifications for Settlement Statement Files and Data Files
MDP_PRO_0033	Market Manual 5: Settlements, Part 5.5: Physical Markets Settlement Statements

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Table of Changes

Reference (Section and Paragraph)	Description of Change
Section 2.2	Added new charge type 1421 – 'Capacity Agreement Settlement Credit' as per IMDC-36. Added new charge type 1422 – 'Capacity Agreement Penalty Settlement Amount' as per IMDC-36. Added new charge type 1423 – 'Energy Sales Agreement Settlement Credit' as per IMDC-36. Added new charge type 1424 – 'Energy Sales Agreement Penalty Settlement Amount' as per IMDC-36. Added new charge type 1471 – 'Capacity Agreement Balancing Amount' as per IMDC-36. Added new charge type 1472 – 'Capacity Agreement Penalty Balancing Amount' as per IMDC-36. Added new charge type 1473 – 'Energy Sales Agreement Balancing Amount' as per IMDC-36. Added new charge type 1474 – 'Energy Sales Agreement Penalty Balancing Amount' as per IMDC-36. Added new charge type 1467 – 'Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount' as per IMDC-33. Added new charge type 9982 – 'Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount' as per IMDC-33. Modified formula for charge types 147 and 148 to include charge types 1471-1474 in GA recovery.
Section 2.4	Added rounding convention for new charge types 1421-1424, 1471-1474. 1467 and 9982.

1. Introduction

1.1 Purpose

The purpose of this document is to provide the reader with the formulas and variable definitions behind each different *charge type* implemented in the *IESO Settlements* process. Furthermore, this document relates each *charge type* to the high-level description of the *settlement amount* within the *IESO market rules* and, where applicable, notes any aspects of the implementation of the *charge type* itself.

1.2 Scope

This document provides the formulas for each *charge type* implemented in the *IESO Settlements* System and those *charge types* which are currently the subject of a Functional Deferral. This document does not, however, provide the format of the information provided to *market participants* on *settlement statements* with respect to each *charge type*. For more information on these topics, the reader is directed to the following Technical Interface Document - "Format Specification for Settlement Statement Files and Data Files".

1.3 Who Should Use This Document

This document is intended for *market participants* in the *IESO-administered markets* who are seeking information regarding the calculations of *settlement amounts* related to each *charge type*. Depending on the activity of the *market participant* in the various *IESO-administered markets*, these *charge types* may have varying degrees of relevance to each *market participant* with respect to their financial settlements.

1.4 Conventions

Usage of an italicized term shall take on the meaning ascribed to that term in the *IESO market rules*.

Unless otherwise noted, usage of variable subscripts and superscripts within this document shall mirror the same usage with in Chapter 9 of the *IESO market rules*. One notable exception is the usage of notation to sum across *settlement amounts* for *charge type* "c". This is further noted in Section 2.2 of this document.

1.5 How This Document is Organized

This document is divided in 6 major subsections as follows:

Section 2.1: A table containing a description of each variable used within **Section 2.2**.

Section 2.2: A table describing *IESO charge types* and equations that are part of an active *IESO-administered market*.

Section 2.3: This section contains a description of rounding conventions for variables described in **Section 2.1**.

Section 2.4: This section contains a description of rounding conventions for *charge type* calculations described in **Section 2.2**.

Section 2.5: This section provides a description of *physical bilateral contract quantities*, their usage by the settlements system, and their use by *market participants* as a vehicle for transferring components of *hourly uplift*.

Section 2.6: This section describes how Day-Ahead import, export and linked wheel transactions are subject to an "Offer Price Test" in order to determine if they are exempt from the Day-Ahead Failure Charges (*charge types*, 1135, 1136 and 1134).

– End of Section –

2. IESO Charge Types and Equations that are Part of an Active IESO-Administered Market

2.1 Variable Descriptions

The following table contains descriptions of each variable used within Section 2.2, describing *IESO charge types* and equations that are part of an active *IESO-administered market*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
This column denotes the abbreviated name of each variable used within Section 2.2.	The full name of each variable used within Section 2.2.	A brief description of each variable used within the formulas illustrated within Section 2.2.	The relevant reference to the variable in question within the *IESO market rules*. The format of each reference is: [Chapter] [Section no.] e.g. Chapter 9 Section 3.1.6 would appear as: 9.3.1.6	This section notes any aspects of the implementation of the variable within the *IESO settlements* process which are otherwise not described in the *IESO market rules* – OR – refers the reader to the appropriate documentation.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
AAD	Adjustment Account Disbursement	The total dollar value of all disbursements from the *IESO adjustment account* authorized by the *IESO Board* in the current *energy market billing period.*	9.6.18.6	Same as *IESO* market rules.
$AQEI_{k,h}^{m,t}$	Allocated Quantity of Energy Injected	Allocated quantity in MWh of *energy* injected by *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Represents only those quantities derived from loss-adjusted and totalized *metering data.* Quantities derived from *interchange schedule data* is captured in the variable SQEI (see below).
$AQEW_{k,h}^{m,t}$	Allocated Quantity of Energy Withdrawn	Allocated quantity in MWh of *energy* withdrawn by *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Represents only those quantities derived from loss-adjusted and totalized *metering data.* Quantities derived from *interchange schedule data* is captured in the variable SQEW (see below).
$AQOR_{r,k,h}^{m,t}$	Allocated Quantity of Operating Reserve	Allocated quantity in MW of *class r reserve* for *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Same as *IESO market rules* and equivalent to DQSR (see below).
BE	Energy Offers	A matrix of 'n' *price-**quantity** pairs* offered by *market participant* 'k' to supply *energy* during *settlement hour* 'h'. *Offer prices* in this matrix may be altered to a **"lower limit"** for the purposes of calculating	9.3.5.2, 9.3.5.6 and 9.3.5.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		charge type 105 (Congestion Management *Settlement* Credit for *Energy)* where any such *offer price*: 1) Is associated with a *generation facility* located within Ontario; or imports and 2) Is less than a specified **"lower limit"** where such limit is the lesser of $0.00/MWh and the *energy market price* for the applicable *dispatch interval*. The situational criteria and threshold for applying such adjustments are further described in *IESO market rules* section 9.3.5.6. and 9.3.5.7.		
BL	Energy Bids	A matrix of 'n' *price-quantity pairs* bid by *market participant* 'k' to withdraw *energy* by a *dispatchable load* during *settlement hour* 'h'.	9.3.5.2	Same as *IESO market rules.*
BR_r	Operating Reserve Offers	A matrix of n *price-quantity pairs* offered by *market participant* 'k' to supply class r *operating reserve* during *settlement hour* 'h'.	9.3.5.2	Same as *IESO market rules.*
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought	*Physical bilateral contract quantity* of *energy* in MWh bought by *buying market*	9.3.1.6	Same as *IESO market rules.*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		participant 'k' from *selling market participant* 's' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.		
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold	*Physical bilateral contract quantity* of *energy* in MWh sold by *selling market participant* 'k' to *buying market participant* 'b' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.6	Same as *IESO market rules*.
CGC	Submitted Combined Guaranteed Costs	A financial amount consisting of fuel cost components defined on a *per-start* basis for a given *generation unit* calculated in a manner consistent with the applicable *market manual*, and encompassing the following elements: 1) Fuel and operation and maintenance (O&M) costs associated with unit synchronization to the *IESO-controlled grid* for a given start-up event (costs submitted via *IESO* portal). 2) Fuel and O&M costs associated with moving the *generation unit* from a valid start to its *minimum loading point* (costs submitted via *IESO* portal).	9.4.7B	Same as *IESO market rules*.
$DA_BE_{k,h}^{m,t}$	*Energy Offer* submitted into the *schedule of record at a delivery point*	*Energy offers* submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *delivery point* 'm' during *metering interval*	9.3.1.2B.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2		
$DA_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *schedule of record at a intertie metering point*	*Energy offers* submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.8A.2B and 9.3.8B.2	Same as *IESO market rules*
$DA_BL_{k,h}^{i,t}$	*Energy* Bids submitted into the *schedule of record*	Energy bids submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2B.7 and 9.3.8D.2	Same as *IESO market rules*
DA_CGC	Submitted Day-Ahead Combined Guaranteed Costs	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT.	9.4.7D.1	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		A financial amount consisting of fuel cost components defined on a *per-start* basis for a given *generation unit* calculated in a manner consistent with the applicable *market manual*, and encompassing the following elements: 1) Fuel and operation and maintenance (O&M) costs associated with unit synchronization to the *IESO-controlled grid* for a given start-up event (costs submitted via *IESO* portal). 2) Fuel and O&M costs associated with moving the *generation unit* from a valid start to its *minimum loading point* (costs submitted via *IESO* portal).		
$DA_DQSI_{k,h}^{m,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Injection at a delivery point	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *delivery point* 'm' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_DQSI_{k,h}^{i,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Injection at an intertie metering point	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_DQSW_{k,h}^{i,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Withdrawal	Day-ahead constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during metering interval 't' of settlement hour 'h'	9.3.1.2A	Same as *IESO market rules.*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DA_ELMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	Day-ahead constrained schedule intertie price at the *delivery point* 'm' of the sink for the export transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	Day-ahead constrained schedule intertie price at the *delivery point* 'm' of the source for the import transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_SNLC_{k,h}^{m}$	Speed-no-load costs submitted into the *schedule of record at a delivery point*	As-offered *speed-no-load cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *delivery point* 'm'	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SNLC_{k,h}^{p}$	Speed-no-load costs submitted into the *schedule of record at a pseudo-unit*	As-offered *speed-no-load cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *pseudo-unit* 'p'	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SUC_{k,h}^{m}$	Start-up costs submitted into the *schedule of record at a delivery point*	As-offered *start-up cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *delivery point* 'm' where *settlement hour* 'h' is the initial hour in the DACP start event	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SUC_{k,h}^{p}$	Start-up costs submitted into the *schedule of record at a pseudo-unit*	As-offered *start-up cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *pseudo-unit* 'p' where *settlement hour* 'h' is the initial hour in the DACP start event	9.3.1.2B.7	Same as *IESO market rules.*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DIPC_{k,h}^{m,t}$	Derived Interval Price Curve	*Energy price curves* derived per interval from submitted hourly day-ahead PSU *energy offers*, represented as a N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *delivery point* 'm' (where 'm' is a CT or ST delivery point) during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.11	Same as *IESO market rules*. Refer to Market Manual 9.5, Appendix B for a detailed description of DIPC.
$DIGQ_{k,h}^{m,t}$	Derived Interval Guaranteed Quantity	Portion of the day-ahead constrained quantity scheduled for injection that is eligible for DA-PCG for *market participant* 'k' at *pseudo unit* 'p' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.11	Same as *IESO market rules*. Refer to Market Manual 9.5, Appendix C for a detailed description of DIGQ.
$DQSI_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Injection	Dispatch quantity of *energy* scheduled for injection in the *real-time schedule* by *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).
$DQSR_{r,k,h}^{m,t}$	Dispatch Quantity Schedule of Operating Reserve	Dispatch quantity schedule of *class r reserve* for *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.4 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DQSW_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Withdrawal	Dispatch quantity of *energy* scheduled for withdrawal in the *real-time schedule* by *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).
DRACP	Demand Response Auction Clearing Price	The *demand response auction clearing price* for the *commitment period* and zone.	N/A	Refer to Market Manual 5.5
$DRACP_h$	Hourly Demand Response Auction Clearing Price	The *demand response auction clearing price* for the *commitment period* and zone divided by the hours of availability for a day.	N/A	Refer to Market Manual 5.5
$DRBOC_k$	Demand Response Buy-Out Capacity	The buy-out capacity is an amount that is being reduced from the *demand response capacity obligation* for *demand response market participant* 'k'.	N/A	Refer to Market Manual 5.5
$DRCO_k$	Demand Response Capacity Obligation (MW)	The *demand response capacity obligation* amount for the *commitment period* and zone for *demand response market participant* 'k'. The initial capacity obligation is acquired through the *demand response auction* and subject to being reduced via the buy-out process.	N/A	Refer to Market Manual 5.5

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DREBQ_k$	Demand Response Energy Bid Quantity	The *demand response energy bid* quantity calculated for *demand response market participant* 'k' as the sum of the quantity of *demand response capacity* provided by all participating demand response resources.	N/A	Refer to Market Manual 5.5
DRNPF	Demand Response Non-Performance Factor	The non-performance factor as listed in Section 7.1 of Market Manual 12 that corresponds and applies to the month being settled.	N/A	Refer to Market Manual 5.5
DRSQty	Demand Response Scheduled Quantity	Calculated as (Total Bid Qty – Schedule) where 'Total Bid Qty' is the maximum quantity of the *demand response energy bid* and where 'Schedule' is the real-time constrained schedule quantity.	N/A	Refer to Market Manual 5.5
EEQ	Excluded Energy Quantity	The total volume of *energy* (MWh) supplied to Fort Frances Power Corporation Distribution Inc. by Abitibi-Consolidated Inc. during the month.	N/A – subject to regulations made pursuant to Bill 100.	N/A – See regulations.
$EGEI_k$	Embedded Generator Energy Injection	The total volume of *energy* (MWh) supplied by *embedded generator*s during the month to *distributors* who are *market participants* and to all embedded distributors to whom the *market participant* 'k' is the host *distributor*, adjusted for losses as required by the *OEB*, Retail Settlement Code.	N/A – subject to regulations made pursuant to Bill 100.	N/A – See regulations.
$EIM_{k,h}$	Operating Profit Function for the IMPORT of Energy	This Operating Profit function is used for the calculation of the Intertie Offer/Bid Guarantee	9.3.8A	$EIM_{k,h}$ IS NOT A VARIABLE

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	under the Intertie Offer/Bid Guarantee Settlement Credit	Settlement Credit (IOBG) with respect the IMPORT of *energy*.		$EIM_{k,h}$ is the output of a particular usage of the Operating Profit (OP) function defined within Chapter 9, Section 3.8A. $EIM_{k,h}$ Input variables into the Operating Profit (OP) Function include: MQSI, EMP, and BE.
$EMP_h^{i,t}$	5-minute Energy Market Price at the Interties	Energy *market price* applicable to *intertie metering point* 'i' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$EMP_h^{m,t}$	5-minute Energy Market Price within Ontario	Energy *market price* applicable to *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$EMP_h^{REF,t}$	5-minute Energy Market Reference Price	Reference energy *market price* used to value losses in the calculation of the *Transmission Charge Reduction Fund*[1] during in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.6.2	Same as *IESO market rules*.
ETS	Export Transmission Service Tariff Rate	Export Transmission Service Tariff Rate in units of $/MWh.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
FP_h^m	Fixed Energy Rate	A fixed *energy* rate for all *metering intervals* in *settlement hour* 'h'.	N/A – subject to regulations made pursuant to *Ontario Energy*	N/A – See regulations.

[1] *Market Rules* ref.: Section 3.6.2 of Chapter 9.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
			Board Act, 1998 until March 31, 2005 and by the *OEB* under such regulations commencing April 1, 2005.	
FPC_h^m	Rate for a designated group of *charge types* (see description of *charge type* 141)	This variable is reserved for *charge type* 141 and applies with respect to charges for the period commencing December 1, 2002 and ending March 31, 2005. See Ontario Regulation 436/02 and Ontario Regulation 98/05.	N/A – subject to regulations made pursuant to *Ontario Energy Board Act, 1998*.	N/A – See regulations
GA – $AQEW_{g,k,h,M}^{m,t}$	Allocated Quantity of Energy Withdrawn for elements of the Global Adjustment distribution	Allocated quantity in MWh of *energy* withdrawn by *market participant* or Distributor 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h' in month 'M' for element "g" Where 'g' is 1 for Class A Market Participant or Consumer load, and 2 for *energy* withdrawn by Generator 'k' in the course of providing Ancillary Services.		
GRP	Generator Regulated Price	A regulated price ($/MWh) with respect to output of OPG's regulated generating stations, set by the *OEB*.	N/A – subject to regulation by the Ontario Energy Board.	N/A – See regulations

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$HOEP_h$	Hourly Ontario Energy Price	*Hourly Ontario Energy Price* in *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$IOG_FV_{k,h}^{i}$	IOG Floor Value	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. The IOG_FVk,hi is a floor value (in dollars to the nearest cent) derived from: • The day-ahead offer prices for the import transaction submitted by the *market participant* over the range of the *pre-dispatch of record* constrained quantity scheduled for that import transaction; and • *Real-time* offer prices for the import transaction at the corresponding location in the corresponding *settlement hour* for any additional *energy* scheduled above and beyond the *pre-dispatch of record* constrained quantity scheduled for that import transaction: **NOTE:** The $IOG_FV_{k,h}^{i}$ is formulated in the manner described in Chapter 9, Section 3.8A.8 of the *IESO market rules* and is used in the formulation of the intertie offer guarantee adjustment (see also, Section 2.2 entry for	9.3.8A.8	Same as *IESO market rules* See Chapter 9, Section 3.8A.8 for details concerning its formulation.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		charge type 1137 within this document).		
$LCD_{k,h}^{m}$	Line Connection Demand (KW)	Billing Demand for Line Connection Transmission Service (KW) for *transmission customer* 'k' at transmission delivery point 'm' during *settlement hour* 'h' in which $LCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
MC_{h}^{m}	Minimum Consumption	Calculation of the self-induced dispatchable load CMSC clawback under Business Rule 2. The minimum consumption is equal to the quantity in the price quantity pair where the bidding price is MMCP (i.e., $2000) at *RWM metering point* 'm' for settlement hour 'h'.	9.3.5.1A	
MI	Ordered matrix of $MQSI_{k,h}^{i,t}$ and corresponding IOG *settlement amounts*	Used for the calculation of the IOG OFFSET *settlement amount*. A matrix of X pairs of *market schedule* quantities scheduled for injection by *market participant* 'k' at all *intertie metering points* 'i' in *metering interval* 't' of *settlement hour* 'h' ($MQSI_{k,h}^{i,t}$) paired with the corresponding component of the intertie offer guarantee settlement credit for each *intertie metering point* 'i'. See equation in Chapter 9, Section 3.8A.4 of the *IESO market rules* for further details.	9.3.8A.4	Same as *IESO market rules*.
$MLP_{k,h}^{m,t}$	Minimum Loading Point	Minimum output of *energy* the *market*	9.3.1.2B.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		participant 'k' at *delivery point* 'm' can maintain without ignition support in *metering interval* 't' of *settlement hour* 'h'		
$MLP_CONS_{k,h}^{m,t}$	Minimum Loading Point for a steam turbine resource or a combustion turbine resource associated to a pseudo unit	Minimum output of *energy* the *market participant* 'k' at *delivery point* 'm' can maintain without ignition support in *metering interval* 't' of *settlement hour* 'h'	9.3.1.2B.7	Same as *IESO market rules.* Refer to Market Manual 9.4, Section 4.1.2.2 for a detailed description of constraints applied for PCG eligible combined cycle plants.
$MQSI_{k,h}^{m,t}$	Market Quantity Scheduled for Injection	Market quantity scheduled for injection in the *market schedule* by *market participant* 'k' at *RWM* or *intertie metering point* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$MQSI\{adj\}_{k,h}^{m,t}$	Adjusted Market Quantity Scheduled for Injection	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. Used for the calculation of the IOG OFFSET *settlement amount*. $MQSI\{adj\}_{k,h}^{i,t}$ is each (and where applicable, adjusted) quantity of *energy* scheduled for injection in the *market schedule* by *market participant* 'k' at an *intertie metering point* 'i' in *metering interval* 't' of *settlement hour* 'h' corresponding with each quantity, $MQSI_{x*,k,h}^{i,t}$	9.3.8A.4	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		in matrix MI, row x*.		
$MQSW_{k,h}^{m,t}$	Market Quantity Scheduled for Withdrawal	Market quantity scheduled for withdrawal in the *market schedule* by *market participant* 'k' at *RWM* or *intertie metering point* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$NSD_{k,h}^{m}$	Network Service Demand (KW)	The Billing Demand for Network Transmission Service (KW) is defined as the higher of: transmission customer coincident peak demand (KW) in the hour of the month when the total hourly demand of all PTS customers is highest for the month; and 85% of the customer peak demand in any hour during the peak period 7 AM to 7 PM (local time) on *business days* defined by the *IESO*. For the purposes of determining business days for calculating transmission charges, the *IESO* uses the holidays identified by the Ontario Energy Board. The peak period hours will be between 0700 and 1900 hours Eastern Standard Time during winter (i.e. during standard time) and 0600 to 1800 hours during summer (i.e. during daylight savings time), in conformance with the meter time standard used by the *IESO*	N/A	Subject to the OEB "Ontario Transmission Rate Order".

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		settlement systems.		
ONPAO	Ontario Power Generation Non-Prescribed Assets Output	OPG's Non-Prescribed Assets are those generation assets operated and controlled by Ontario Power Generation in service as of January 1, 2006, excluding Lennox Generating Station, that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the "Electricity Restructuring Act, 2004". ONPAO refers to the generation output from OPG's Non-Prescribed Assets, over each hour of the quarter adjusted to take account of volumes sold through forward contracts in effect as of January 1, 2005. For greater certainty, any output from ONPA resulting from fuel conversion by Ontario Power Generation in ONPA, or incremental output from ONPA resulting from refurbishment or expansion is to be excluded from ONPAO. Incremental Output is defined as: generation output x (new total installed capacity – installed capacity as of January 1, 2006) / new total installed capacity	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
OP	Operating Profit Function	The Operating Profit function is used for the calculation of the Congestion Management Settlement Credit (CMSC) with respect to constrained on/off payments for *energy*, *operating reserve*. It is also used for the calculation of the Day-Ahead Production Cost Guarantee components, the Day-Ahead Generator Withdrawal Charge, the Day-Ahead Import and Export failure charges, and the Import Offer Guarantee Settlement Credit.	9.3.5.2 and 9.3.8A.2	OP IS NOT A VARIABLE OP is a mathematical function defined within Chapter 9, section 3.5.2. of the *IESO market rules* Input variables include: MQSI, MQSW, SQROR AQEI, AQEW, AQOR SQEI, SQEW, DSQI, DSQW, DSQR DA_DQSI, DA_DQSW, PD_DQSI, PD_DQSW BE, BL, BR_r PD_BE, PD_BL DA_BE, DA_BL EMP MLP, MLP CONS DIPC OPCAP OP is also used within Chapter 9, Section 9.8A.2 of the *IESO market rules* to derive the Energy Import ($EIM_{k,h}$) sub-component of the Intertie Offer Settlement Credit

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
				(IOG) using the following input variables: MQSI BE EMP
$OPCAP_{k,h}^{m,t}$	Operating Capacity	De-rating of the generation unit by *market participant* 'k' at *delivery point* 'm' in *metering interval* 't' of *settlement hour* 'h'	9.3.1.2B.7	Same as *IESO market rules.*
$OPE\{adj\}_{k,h}^{i}$	Adjusted CMSC component for *energy* used in the DA-Ahead IOG	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. This congestion management *settlement* credit *settlement amount* (CMSC) component is specifically used in the calculation of the Day-Ahead IOG for import transactions that are subject to a *constrained-on event* in the *real-time market.* $OPE\{adj\}_{k,h}^{i}$ is an adjusted component of The congestion management *settlement* credit *settlement amount* (CMSC) for *market participant* 'k' at *intertie metering point* 'i' for *settlement hour* 'h' in which the constrained schedule is the lesser of $PDR_DQSI_{k,h}^{i,t}$ or $DQSI_{k,h}^{i,t}$ but in all instances, greater than or equal to $MQSI_{k,h}^{i,t}$.	9.3.8A.2A	'OP' is a mathematical function used within Chapter 9, Section 9.3.8A.2A of the *IESO market rules* to derive Day-Ahead Intertie Offer Guarantee. Please see the *market rules* for information regarding its formulation.
ORL	Ontario Power Generation	For the period May 1, 2006 to April 30, 2007	N/A	The formula for calculating the

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	Revenue Limit	ORL is equal to $46/ MWh. For the period May 1, 2007 to April 30, 2008 ORL is equal to $47/ MWh. For the period May 1, 2008 to April 30, 2009 ORL is equal to $48/ MWh.		OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAA	Pilot Auction Amount	Refers to the Pilot Auction administered by the *Ontario Power Authority* in the first half of 2006. The volume in MWh over each hour in the quarter that is sold by Ontario Power Generation through the PA.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAORL	Pilot Auction Ontario Power Generation Revenue Limit	For the period May 1, 2006 to April 30, 2007 PAORL is equal to $51/ MWh. For the period May 1, 2007 to April 30, 2008 PAORL is equal to $52/ MWh. For the period May 1, 2008 to April 30, 2009 PAORL is equal to $53/ MWh.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAP	Pilot Auction Price	The weighted average auction price in $/ MWh over each hour of the quarter realized for the PAA by Ontario Power Generation.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$PB_IM_h^t$	Price bias adjustment factor for import transactions	Price bias adjustment factor for import transactions in effect during *metering interval* 't' of *settlement hour* 'h'.	9.3.8C.3	Same as *IESO market rules*
$PB_EX_h^t$	Price bias adjustment factor for export transactions	Price bias adjustment factor for export transactions in effect during *metering interval* 't' of *settlement hour* 'h'.	9.3.8C.5	Same as *IESO market rules*
$PD_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the Pre-dispatch	*Energy offers* submitted in Pre-dispatch, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2D	Same as *IESO market rules.*
$PD_BL_{k,h}^{i,t}$	*Energy* Bid submitted into the Pre-dispatch	Energy bids submitted in *pre-dispatch*, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2D	Same as *IESO market rules.*
$PD_DQSI_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for injection at an	*Pre- dispatch* constrained quantity scheduled for injection by *market participant* 'k' at	9.3.1.2C	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	intertie metering point	*intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.		
$PD_DQSW_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for withdrawal at an *intertie metering point*	*Pre- dispatch* constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2C	Same as *IESO market rules*
$PD_ELMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	*Pre-dispatch* constrained schedule intertie price at the *delivery point* 'm ' of the sink for the export transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2C	Same as *IESO market rules.*
$PD_EMP_{h}^{m,t}$	Pre-dispatch energy market price for Ontario	*Pre-dispatch* projected *energy market price* applicable to all *delivery points* 'm' in the Ontario zone in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2C	Same as *IESO market rules*
$PD_ILMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	*Pre-dispatch* constrained schedule intertie price at the *delivery point* 'm' of the source for the import transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2C	Same as *IESO market rules.*
$PDF_{k,m,d}$	Peak Demand Factor	The Peak Demand Factor for Class A Market Participant or Distributor 'k' for month 'm' with effectiveness ratio 'd'.	N/A – subject to regulation by the *Ontario Energy Board*	N/A – See regulations.
$PDR_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *pre-dispatch of record*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT.	9.3.1.2B	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		Energy offers submitted into the *pre-dispatch of record*, represented as an n by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair*, where *offered prices* are in column 1 and *offered quantities* are in column 2.		
$PDR_DQSI_{k,h}^{i,t}$	*Pre-dispatch of record* dispatch quantity scheduled for injection at an *intertie metering point*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. *Pre-dispatch of record* constrained quantity scheduled for injection by *market participant* 'k' for an import transaction at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2A	Same as *IESO market rules*
$PDR_DQSI_{k,h}^{m,t}$	*Pre-dispatch of record* dispatch quantity scheduled for injection at a *delivery point*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. *Pre-dispatch of record* constrained quantity scheduled for injection by *market participant* 'k' at *delivery point* 'm' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2A	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$PGS_{h,M}$	Allocated Quantity of Energy Withdrawn by OPG at Beck Pump Generating Station	Allocated quantity in MWh of *energy* withdrawn by OPG at Beck Pump Generating Station in *metering interval* 't' of *settlement hour* 'h' for month 'M'.		
$PROR_{r,h}^{m,t}$	5-minute Operating Reserve Price	*Market price* in $/MW of *class r reserve* in *metering interval* 't' of *settlement hour* 'h' at *RWM* 'm' or *intertie metering point* 'm'.	9.3.1.4	Same as *IESO market rules*.
$PST_{k,h}^{p,t}$	Steam turbine portion from Daily Generator Data	The percentage of the *pseudo-unit*'s schedule that relates to the steam turbine in association with *offer k* for *market participant* 'k' at *pseudo unit* 'p' during *metering interval* 't' of *settlement hour* 'h'	7.2.2.2	Same as *IESO market rules*.
PTS-L	Provincial Transmission Service Line Connection Service Rate ($/KW)	Line Connection Transmission Tariff Service Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
PTS-N	Provincial Transmission Service Network Service Rate ($/KW)	Network Transmission Tariff Service Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
PTS-T	Provincial Transmission Service Transformation Connection Service Rate ($/KW)	Transformation Connection Service Transmission Tariff Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
$QTR_{k,h}^{i,j}$	Quantity of Transmission Rights Owned	Quantity of TRs in MW assigned to *market participant* 'k' for transmission from injection *TR zone* 'i' to withdrawal *TR zone* 'j'.	9.3.1.8 and 8.4.2	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
RPP_l	Regulated Price Plan	A fixed *energy* rate for all *metering intervals* based on consumption level l.	N/A – subject to regulation by the *Ontario Energy Board*	N/A – See regulations.
RQ	Reallocate Quantity	A quantity derived from a *physical bilateral contract quantity* ($BCQ_{k,b,h}^{m,t}$ or $BCQ_{s,k,h}^{m,t}$) in order to reallocate a component of *hourly uplift* from the *buying market participant* to the *selling market participant* in direct proportion to the size of the *physical bilateral contract.*	N/A	See hourly uplift charge types in Section 2.2
$SQEI_{k,h}^{i,t}$	Scheduled Quantity of Energy Injected at an *intertie metering point*	Scheduled quantity in MWh of *energy* injected by *market participant* 'k' at *intertie metering point* 'i' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.9	This variable is a sub-set of variable AQEI described in Section 3.1.9 of Chapter 9 of the *market rules*, specifically referring to those quantities derived from *interchange schedule data*.
$SQEW_{k,h}^{i,t}$	Scheduled Quantity of Energy Withdrawn at an *intertie metering point*	Scheduled quantity in MWh of *energy* withdrawn by *market participant* 'k' at *intertie metering point* 'i' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.9	This variable is a subset of variable AQEW described in Section 3.1.9 of Chapter 9 of the *market rules*, specifically referring to those quantities derived from *interchange schedule data*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$SQROR_{r,k,h}^{m,t}$	Scheduled Quantity of class r Operating Reserve	Market Schedule quantity in MW of *class r reserve* for *market participant* 'k' in *metering interval* 't' of *settlement hour* 'h' at *RWM* 'm'.	9.3.1.4	Same as *IESO market rules*.
$TCD_{k,h}^{m}$	Transformation Connection Demand (KW)	Billing Demand for Transformation Connection Transmission Service (KW) for *transmission customer* 'k' at transmission delivery point m during *settlement hour* 'h' in which $TCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
$TD_{k,h,c}$	Total Market Settlement Amount	Total *settlement amount* (dollars) for the market used in *hourly uplift* and calculations for various other non-hourly *settlement amounts* for *market participant* 'k' or *transmission customer* 'k' during *settlement hour* 'h' with respect to *charge type* 'c'.	N/A	This is purely a notational term is used within the documentation to describe the aggregation of various *settlement amounts*. A summation across *charge type* 'c' denotes an aggregation of all *settlement amounts* for that *charge type* for the time period concerned. e.g.: $\sum_{c}^{T}$ indicates a summation of all *settlement amounts* for *charge type* 'c' during all *metering intervals* 'T'.
TLQ	Threshold Load Quantity	A threshold (kWh) with respect to monthly consumption of regulated customers, set by the *OEB*.	N/A – subject to regulation by the *Ontario Energy*	N/A – See regulations.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
			Board.	
TP_c	Tariff price	A stipulated rate ($/MWh, $/KW) used in the calculation of a specific *charge type* 'c'.	N/A	This is purely a notational term is used within the documentation to describe the unique per MW or per MWh rate applied to specific quantities in order to calculate various *settlement amounts*.
TRMP	TR Market Clearing Price	The price of each *transmission right* in a single round of a *TR auction*.	8.4.15	Same as *IESO market rules*.
TRCAD	TR Clearing Account Disbursements	The total dollar value of all disbursements from the *TR clearing account* authorized by the *IESO Board* in the current *energy market billing period*.	9.4.7.2	Same as *IESO market rules.*
$X_h^{m,t}$	Settlement Floor Price for exports	A *settlement* floor price for *energy* applicable to *intertie metering point* 'm' *metering interval* 't' in *settlement hour* 'h' as set in the applicable *market manual*. The need for a *settlement* floor price other than *MMCP* shall remain in effect only until floor prices for *energy offers* from *registered market participants* that are *variable generators* or nuclear *generators* go into effect.	9.3.1.3	Same as *IESO market rules*

2.2 Charge Types and Equations

The following table contains the *IESO charge types* and equations that are part of an active *IESO-administered market*.

Key to the Table Below	
Charge Type Number	The designation number for each *charge type* enumerated below – which correspond to the *charge type* numbers used on *settlement statements* and *invoices*.
Charge Type Name	The name of the *charge type*.
Settlement Amount Acronym	The abbreviated name of the variable used to describe the *settlement amount* within the *IESO market rules*.
Market Rules Refer.	The relevant reference to the variable in question within the *IESO market rules*. The format for each reference is: [Chapter] [Section number] For example: “Chapter 9 Section 3.1.6” would appear as: 9.3.1.6
Equation	The equation used by the *IESO settlements process* to calculate the *settlement amount* related to each *charge type*.

Key to the Table Below	
Settlement Resolution	The level of granularity by which the *IESO settlements process* calculates the *settlement amount* (for which the *charge type* is related), and provides the supporting data in the settlement data file. Where: • "Interval" means that the calculations are performed on the basis of each relevant, 5-minute *metering interval*; • "Hourly" means that the calculations are performed on the basis of each *settlement hour*; • "Daily" means that the calculations are performed on the basis of each calendar day; • "Monthly" means that the calculations are performed on the basis of a calendar month (equivalent to a real-time market *billing period*); • "Quarterly" means that the calculations are performed on the basis of 3 month intervals; • "Yearly" means that the calculations are performed on the basis of a calendar year.
Cashflow	This column indicates whether or not the *settlement amount* (for which the *charge type* is related) is: • "Due *IESO*" – which means, owed to the *IESO* by the *market participant*;*** or • "Due MP" – which means, owed to the *market participant* by the *IESO*;*** or • "Either Way" – which indicates that the *settlement amount* in question could be either owed to the *IESO* by the *market participant* or owed to the *market participant* by the *IESO* in any given time period (according to the applicable "settlements resolution"). *****NOTE in cases where a Cashflow is designated as "Due *IESO*" or "Due MP" this should be read in the context of its intended use in the normal course of *settlements*. However, such cashflows can always be REVERSED in situations where an adjustment is applied to a *market participant*, or the application of a per-unit charge in order to offset an adjustment to another *market participant*.**
HST Tax Treatment within Ontario	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zone used for Tax Basis is (ONZN) for Ontario. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".

Key to the Table Below	
HST Tax Treatment for U.S., Manitoba and Quebec Generation	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zones used for Tax Basis are (NYSI) for US Generation, (MBSI) for Manitoba Generation and (PQSI) for Quebec Generation. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
HST Tax Treatment for US Load	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zone used for Tax Basis is (NYSI) for US Load. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
HST Tax Treatment for Manitoba and Quebec Load	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zones used for Tax Basis are (MBSI) for Manitoba Load and (PQSI) for Quebec Load. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
Comments	This column notes any *charge types* that are governed by various documentation other than the *IESO market rules*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Financial Market Charge Types										
52	Transmission Rights Auction Settlement Debit	N/A	8.4.17	$QTR_{k,h}^{i,j} \times TRMP$	Daily	Due *IESO*	Exempt	Exempt	Exempt	Exempt	
	Physical Market Charge Types										
100	Net Energy Market Settlement for Generators and Dispatchable Load	$NEMSC_{k,h}$	9.3.3.2	For *dispatchable facilities* or an *intertie metering point* associated with: i) An injecting *boundary entity*; ii) A withdrawing *boundary entity* where the associated *intertie congestion price* is less than zero; iii) A withdrawing *boundary entity* conducting a wheeling through transaction that is linked as per Chapter 7, section 3.5.82 of the *market rules* $\sum_{t,m} (EMP_h^{m,t} \times ((AQEI_{k,h}^{m,t} + SQEI_h^i - AQEW_{k,h}^{m,t} - SQEW_h^i) +$	Interval	Either Way	13	13	0	13	Refer to HST Guide regarding tax treatment of negative priced imports and exports.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$\sum_{s,b} (BCQ_{s,k,h}^{m,t} - BCQ_{k,b,h}^{m,t})))$ For an *intertie metering point* associated with a withdrawing *boundary entity* where that *intertie congestion price* is not less than zero: $\sum_{t,m}((MAX (X_h^{m,t}, EMP_h^{m,t}) \times AQEI_{k,h}^{m,t})$							
101	Net Energy Market Settlement for Non-dispatchable Load	$NEMSC_{k,h}$	9.3	$HOEP_h \times \sum_{t,m} (AQEI_{k,h}^{m,t} - AQEW_{k,h}^{m,t} + \sum_s BCQ_{s,k,h}^{m,t}) - \sum_{n,b,t} (EMP_h^{m,t} \times BCQ_{k,b,h}^{n,t})$	Hourly	Either Way	13	N/A	N/A	N/A	
102	TR Clearing Account Credit	$TRCAC_k$	9.4.7.2	$TRCAD \times \sum_H^{M,T} [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the *billing periods* immediately preceding the current *billing period*, as determined by *IESO Board.* Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'. Where 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i' Where 'K' is the set of all *market participants* 'k'.	Monthly (when applicable)	Due MP	13	N/A	0	13	The *billing period* is defined in Market Manual 5.5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.27

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
103	Transmission Charge Reduction Fund	$TCRF_h$	9.3.6.2 and 8.4.18	$\sum_{t,m} (EMP_h^{m,t} - EMP_h^{REF,t}) \times \sum_k (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} - AQEI_{k,h}^{m,t} - SQEI_{k,h}^{i,t}) - \sum_k TRSC_{k,h}$	Hourly	Accumulates in the *TR Clearing Account*	N/A	N/A	N/A	N/A	See *IESO market rules*, Chapter 8 Section 4.18 for further details.
104	Transmission Rights Settlement Credit	$TRSC_{k,h}$	9.3.6.1	$MAX((0), (\sum_{j,i} 1/12 \times QTR_{k,h}^{i,j} \times \sum_t (EMP_h^{j,t} - EMP_h^{i,t}))$	Hourly	Due MP	0	0	0	0	
105	Congestion Management Settlement Credit for Energy	$CMSC_{k,h}$	9.3.5.2 to 9.3.5.7	$OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Subject to the mathematical sign of (DQSI-MQSI) being equal to the mathematical sign of (AQEI-MQSI). $AQEI_{k,h}^{m,t}$ and $EMP_h^{m,t}$ may be substituted with $SQEI_{k,h}^{i,t}$ and $EMP_h^{i,t}$ respectively, where the application of this equation pertains to *intertie metering point* 'i'. or $-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) - MAX(-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL), -1OP(EMP_h^{m,t}, AQEW_{k,h}^{m,t}, BL))$ Subject to the mathematical sign of (DQSW-MQSW) being equal to the mathematical sign of	Interval	Either Way	13	13	13	13	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*. Offer prices in matrix 'BE' may be revised down to a lower limit as described in 9.3.5.6. See also: description of variable 'BE' in Section 2.2. The bid prices in the matrix BL may be revised as described in

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				(AQEW-MQSW). $AQEW_{k,h}^{m,t}$ and $EMP_h^{m,t}$ may be substituted with $SQEW_{k,h}^{i,t}$ and $EMP_h^{i,t}$ respectively, where the application of this equation pertains to *intertie metering point* 'i'. or For *variable generators* that are registered *market participants* whose *registered facility* is operating under a release notification for any given *dispatch interval*, and the *facility*'s market schedule quantity is less than the corresponding quantity in the constrained schedule for the same dispatch interval as a result of the *market participant*'s offers being partially or fully uneconomic: $OPE(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE)$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.							Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.8.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
106	Congestion Management Settlement Credit for 10 Minute Spinning Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either Way	13	N/A	N/A	N/A	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.
107	Congestion Management Settlement Credit for 10 Minute Non-spinning Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either Way	13	N/A	N/A	N/A	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.
108	Congestion Management Settlement Credit for 30 Minute Operating Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either way	13	N/A	N/A	N/A	This *charge type* holds *the market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
111	Northern Pulp and Paper Mill Electricity Transition Program Settlement Amount	N/A	N/A	$= \sum_{M\,H}{}^{T} (AQEW_{mh}{}^{t})$ x (Tprate) Where: Tprate is the transition program rate 'M' is the set of all *delivery points* 'm' for all *market participant*-eligible *facilities*. 'H' is the set of all *settlement hours* 'h' in the settlement period. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 5 H'. 'AQEW' is limited to a maximum of 1,000,000 MWh annually per eligible *market participant*.	Quarterly	Due MP	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to Ministry of Natural Resources specifications. This program ends on September 30, 2010.
112	Ontario Power Generation Rebate	N/A	N/A	$= TD_{162}$ x $[(AQEW_{k,h}{}^{t}) / \sum_{K,H}{}^{T} (AQEW_{k,h}{}^{t})]$ Where: 'K' is the set of all Ontario *market participants* 'k' 'H' is the set of all *settlement hours* 'h' in the applicable quarter. 'T' is the set of all *metering*	May 1, 2006 to April 30, 2009	Due MP	13	N/A	N/A	N/A	The Ontario Power Generation Rebate payments will be based on the allocated quantity of *energy* withdrawn for the applicable quarter.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' in the set of all *settlement hours* 'H'.							
113	Additional Compensation for Administrative Pricing Credit	N/A	7.8.4A.16 or 7.8.4A.10 or 7.13.6.2	Manual Entry as per 7.8.4A.16, or 7.8.4A.10, or 7.13.6.2.	Monthly	Due MP	13	13	0	13	This charge will still be used for market suspension events
114	Outage Cancellation/Deferral Settlement Credit.	N/A	5.6.7.4	Manual Entry as per 5.6.7.4.	Monthly	Due MP	13	N/A	N/A	N/A	
115	Unrecoverable Testing Costs Credit	N/A	9.4.8.1.1 and4.5.3.4	Manual Entry as per 4.5.3.4.	Monthly	Due MP	13	13	13	13	
116	Tieline Maintenance Reliability Credit	N/A	9.4.8.1.2 and 5.5.3.4	Manual Entry as per 5.5.3.4.	Monthly	Due MP	13	13	13	13	
118	Emergency Energy Rebate	N/A	9.4.8.2 and 5.4.4A.1	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of *all metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due MP	13	N/A	0	13	
119	Station Service Reimbursement	N/A		$= \{TD_{C,k,h}^{m,T} \times [\sum^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,h}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}$	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Credit		9.4.8.1.6 and 9.2.1A.9 - 2.1A14	$)]\} + \{TD_{C2,k,H}^{m,T} \times [\sum_{H2}^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,H}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]\} + \{TD_{C3,k,H}^{m,T} \times [\sum_{H4}^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,H3}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]\}$ Where: 'T' is the set of all *metering intervals* in *settlement hour* 'h'. 'M' is the eligible generation station service delivery point 'm' of market participant 'k' 'C' is the set of the following hourly uplift *charge type* c as follows: 150, 155, 250, 252, 254, 451 'T2' is the set of all *metering intervals* in *settlement hour* 'h' where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*. 'K' is the set of all *market participants* 'C2' is the set of the following non-hourly monthly *charge type* 'c' as follows: 163,164,165,166,167,168,169,183, 184,450,452,454,460,550,1188,							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				1650 'C3' is the set of the following daily *charge type* 'c' as follows: 1550, 1560 'H' is the set of all *settlement hours* 'h' in the *billing period* 'H2' is the set of all *settlement hours* 'h' in the *billing period* where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*. 'H3' is the set of all *settlement hours* 'h' in the day 'H4' is the set of all *settlement hours* 'h' in the day where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*.							
120	Local Market Power Debit	N/A	9.4.8.2.2 and Ch. 7, Appendix 7.6		Monthly	Due *IESO*	13	13	0	13	
121	Northern Industrial Electricity Rate Program Settlement Amount	N/A	N/A	$= \sum_{M\,H}{}^{T} (AQEW_{mh}{}^{t})$ x (Rate) Where: Rate is the program rate 'M' is the set of all *delivery points*	Quarterly	Due MP	0	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to Ministry of Northern

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'm' for all *market participant*-eligible *facilities*. 'H' is the set of all *settlement hours* 'h' in the settlement period. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 5 H'.							Development, Mines and Forestry specifications.
122	Ramp Down Settlement Amount	$RDSA_{k,h}$	9.3.5A.1	Let 'BE' be a matrix of n *price-quantity pairs* offered by *market participant* 'k' to supply *energy* during the *settlement hour* immediately before the hour in which ramp-down begins, adjusted by a ramp-down factor (RDF) as specified in the applicable *market manual*. Let OP(P,Q,B) be a function of Price (P), Quantity (Q) and an n x 2 matrix (B) of offered *price-quantity pairs*: $OP(P,Q,B) = P \cdot Q - \sum_{i=1}^{s*} P_i \cdot (Q_i - Q_{i-1}) - (Q - Q_{s*}) \cdot P_{s*+1}$	Interval	Either Way	13	N/A	N/A	N/A	The RDF is defined in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.31.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: s* is the highest indexed row of BE such that $Q_{s*} \leq Q \leq Q_n$ and where, $Q_0=0$ Using the terms below, let $RDC_{k,h}^{m,t}$ be expressed as follows: $RDC_{k,h}^{m,t} = MAX[0, [OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) – MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))]]$ $RDSA_{k,h}^{m,t} = MIN(-1 \times RDCB_{k,h}^{m,t}, RDC_{k,h}^{m,t})$							
130	Intertie Offer Guarantee Settlement Credit – Energy	$IOG_{k,h}$ and $IOG_{k,h}$OFF SET	9.3.8A.1 9.3.8A.3 and 7.3.5.8.1	**<u>**CALCULATIONS FOR *CHARGE TYPE* 130 END OCTOBER 12, 2011. *CHARGE TYPE* 130 REPLACED BY**</u>	Hourly (the IOG Offset is debited)	Either Way	N/A	13	13	13	Compensation for cumulative, hourly financial losses as implied by the *market schedule* for

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				***CHARGE TYPE* 1131 EFFECTIVE OCTOBER 13, 2011.** The Intertie Offer Guarantee *settlement amount* is derived from an hourly *Energy* Import sub component ($EIM_{k,h}$) as follows: $\sum_I (-1)MIN[0, \sum^T OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE)]$ See 9.3.8A.2 for the definition of the Operating Profit (OP) function referenced above. Where 'I' is the set of relevant *intertie metering points* 'i'. Where 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'. The IOG_OFFSET component of this *charge type* applied on a monthly basis and is calculated as follows: $= DA_IOG_{k,h} + EIM_{k,h} - \sum^I(-1) * MIN[0, \sum^T OP(EMP_h^{i,t}, QSI\{adj\}_{k,h}^{i,t}, BE_{k,h}^{i,t}$ or $PDR_BE_{k,h}^{i,t}) + \sum^T QSI\{adj\}_{k,h}^{i,t} / \sum^T MI_{k,h}^{t}[n,1] * OPE'_{k,h}^{i}]$							Imports of *energy* at an *intertie metering point*. This amount is reduced by the IOG Offset when the import is part of an implied "wheeling through" transaction as described in Section 3.5.8.1 of Chapter 7.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				(See 9.3.8A.4 for the derivation of the variable $QSI\{adj\}_{k,h}^{i,t}$, $OPE'_{k,h}{}^{i}$ and the proper context of the matrix notation $MI_{k,h}^{t}[n,1]$ used above).							
133	Generation Cost Guarantee Payment	N/A	9.4.7B	Dispatchable *delivery points:* $MAX[0, (CGC + RT_COST - \sum^{T} EMP_{h}^{m,t} \times AQEI\{limited\}_{k,h}^{m,t} - - \sum^{T} CMSC_REV_{k,h}^{m,t}]$ **Subject to:** $AQEI\{limited\}_{k,h}^{m,t} = MIN[AQEI_{k,h}^{m,t}$, *minimum loading point*] Where 'CGC' is a *Submitted Combined Guaranteed Costs* variable, assessed in accordance with the applicable *market manual* (see also Section 2.1 "Variable Description"). Where 'm' is *delivery point* 'm' at which the *generation unit* incurring the relevant costs is located. Where 'T' is a set of *metering intervals* 't' from a valid start time	Hourly	MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				until the earlier of: - the end of *minimum generation block run-time;* or - the end of the unit's *minimum run-time.* Where $AQEI\{limited\}_{k,h}^{m,t}$ shall denote all allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h', up to the *generation unit's minimum loading point.* Where RT_COST is fuel and O&M cost component related to operation of the *generation unit* at its *minimum loading point* during its *minimum generation block run-time* (these costs are calculated based on the *offer* price associated with real-time dispatch). $RT_COST_k = \Sigma^{T^*}_{H1}$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				COST(AQEI{limited}$_{k,h}^{m,t}$, BE) A. Where the COST function is defined as follows: $COST(Q,B) = \sum_{i=1}^{s^*} P_i \cdot (Q_i - Q_{i-1})$ *where:* • B is the n x 2 matrix (B) of offered *price-quantity pairs* (P_i , Q_i) • s* is the highest indexed row of B such that $Q_{s*-1} \leq Q \leq Q_{s*}$ and where $Q_0=0$ B. Where 'H1' is the set of all settlement hours 'h' during the period from beginning of the *minimum generation block run-time* until the end of the calculated *minimum run time.* We consider that the *minimum generation block run-time* starts with the first hour after we add the submitted number of ramp intervals to the valid start-up hour.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				C. Where 'T*' is the set of *metering intervals* 't' in the set of all *settlement hours* 'H1' Where $CMSC_REV_{k,h}^{m,t}$ is any real-time $CMSC(TD_{k,h,105}^{m,t})$ payment associated with allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point*. CMSC_REV is calculated using the following rules: 1) Real-time CMSC ($TD_{k,h,105}^{m,t}$) for the same interval is greater than zero. 2) If $MQSI_{k,h}^{m,t}$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) >= MLP, then $CMSC_REV_{k,h}^{m,t} = 0$. 3) In the case of a *constrained-off event*: a. If $MQSI_{k,h}^{m,t}$ < MLP, then							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} >= MLP$ and $max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) <= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MLP, BE) - OP(EMP, max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}), BE)$. 4) In the case of a *constrained-on event*: a. If $MQSI_{k,h}^{m,t} < MLP$ and $min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} <= MLP$ and $min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) >= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_{h}^{m,t}, MLP, BE)$ (See applicable *market manual*)							
134	Demand Response Credit	N/A	9.4.7C 9.4.7F	Manual Entry for TDRP (Refer to "Market Manual 5: Settlements, Part 5.10: Transitional Demand	Monthly	Either way	13	N/A	NA	N/A	TDRP and ELRP suspended by the *IESO*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Response Program". Manual Entry for ELRP (Refer to "Market Manual 10: Emergency Load Reduction Program (ELRP)".							
135	Real-time Import Failure Charge	$RT_IFC_{k,h}$	9.3.8C.3	$\sum^{I,T}$ (-1) * MIN[MAX[0, ($EMP_h^{m,t}$ + $PB_IM_h^t$ – $PD_EMP_h^{m,t}$) * $RT_ISD_{k,h}^{i,t}$], (MAX(0, $EMP_h^{m,t}$)* $RT_ISD_{k,h}^{i,t}$)] Where: 'I' is the set of all *intertie metering points* 'i'. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. $RT_ISD_{k,h}^{i,t}$ = MAX ($PD_DQSI_{k,h}^{i,t}$ – $DQSI_{k,h}^{i,t}$, 0)	Hourly	Due *IESO*	N/A	13	N/A	N/A	Subject to exemptions under the provisions of 9.3.8C.2.2.
136	Real-time Export Failure Charge	$RT_EFC_{k,h}$	9.3.8C.5	$\sum^{I,T}$ (-1) * MIN[MAX[0, ($PD_EMP_h^{m,t}$ – $EMP_h^{m,t}$ – $PB_EX_h^t$) * $RT_ESD_{k,h}^{i,t}$], (MAX(0, $PD_EMP_h^{m,t}$)* $RT_ESD_{k,h}^{i,t}$)] Where: 'I' is the set of all *intertie metering points* 'i' 'T' is the set of 12 *metering*	Hourly	Due *IESO*	N/A	N/A	0	13	Subject to exemptions under the provisions of 9.3.8C.4.2.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h' $RT_ESD_{k,h}^{i,t} = MAX(PD_DQSW_{k,h}^{i,t} - DQSW_{k,h}^{i,t}, 0)$							
140	Fixed Energy Rate Settlement Amount	N/A	N/A	**** *CHARGE TYPE* 140 REPLACED BY *CHARGE TYPE* 142 EFFECTIVE JANUARY 1, 2005 **** **NOTE:** The equations identified below apply to low volume and designated consumers (as defined in *Ontario Energy Board Act, 1998* and associated regulations) in the *IESO-administered market*. For *distributors, charge type* 140 is applied once a month based on the values submitted by the *distributor* on IMO_FORM_1562 (monthly adjustment) and IMO_FORM_1505 (May-Nov 2002 refund). For *IESO's* low volume and designated customers a fixed rate adjustment with a rate of 5.5 cents per kWh is applied on an interval basis using the equation below. A manual adjustment is applied at the end of the month to apply a rate of 4.7 cents per kWh for *energy* withdrawn up to 750 kWhs. **Fixed Energy Rate Settlement Amount (dispatchable locations):** **Where net uncovered consumption > 0:** $\Sigma_{T,m} (EMP_h^{m,t} - FP_h^{m}) \times (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t})$ **Where net uncovered consumption = 0:** $\Sigma_{T,m} (EMP_h^{m,t} - FP_h^{m}) \times (-AQEI_{k,h}^{m,t})$ **SUBJECT TO:**Net uncovered consumption = $MAX [\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}), 0]$	Hourly (type 'DP' records only. See: "Format Spec. for Settlement Statement Files and Data Files" for further details)	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Fixed Energy Rate Settlement Amount (non-dispatchable locations): **Where net uncovered consumption > 0:** $(HOEP_h - FP_h^m) \times \Sigma_{m,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t})$ **Where net uncovered consumption = 0:** $(HOEP_h - FP_h^m) \times \Sigma_{m,T} (- AQEI_{k,h}^{m,t})$ **SUBJECT TO:** Net uncovered consumption = MAX $[\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}),0]$ **SUBJECT TO:** Net uncovered consumption = MAX $[\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}),0]$							
141	Fixed Wholesale Charge Rate Settlement Amount	N/A	N/A	**** CALCULATIONS FOR *CHARGE TYPE* 141 END MARCH 31, 2005 **** **NOTE:** The equations identified below apply to *distributors*, low volume and designated consumers (as defined in Bill 4 and associated regulations) in *the IESO-administered market.* For *distributors* an additional *charge type* 141 record is provided to reflect any monthly submission of IMO_FORM_1562. See IMO_FORM_1562 for further details. $TD_{k,C} - \sum_{M,H} AQEW_{k,h}^{m,t} * (FPC)$ Where: 'H' is all *settlement hours* 'h' during	Monthly	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the *billing period;* and, 'C' is a designated group of *charge types* 'c' prescribed by government regulation (and associated rulings by the *Ontario Energy Board*) and consisting of the cumulative sum of the following *charge types*: **150, 155, 168, 170, 182, 183, 184, 250, 252, 254, 450, 452, 454, 550, 753, 9990**							
142	Regulated Price Plan Settlement Amount	N/A	N/A	**NOTE:** The equation identified below applies to low volume and designated consumers (as defined in *Ontario Energy Board Act, 1998* and associated regulations) in the *IESO-administered market*. For *distributors, charge type* 142 is applied once a month based on the values submitted by the *distributor* via On-line settlement forms: "Regulated Price Plan vs. Market Price – Variance for Conventional Meters", "Regulated Price Plan vs. Market Price – Variance for Smart Meters" and "Regulated Price Plan – Final Variance Settlement Amount". **Regulated Price Plan Settlement**	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government and OEB regulations.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Amount: $NEMSC_{k,H} - \{ MIN [TLQ , \sum_H^{M,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \sum_s BCQ_{s,k,h}^{m,t})] \times RPP_{l=1} + MAX [0, \sum_H^{M,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \sum_s BCQ_{s,k,h}^{m,t}) - TLQ] \times RPP_{l=2} \}$							
143	NUG Contract Adjustment Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *OEFC* via On-line settlement form "NUG Adjustment Amount Information", subject to Regulation.	Monthly	Due *OEFC*	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
144	Regulated Nuclear Generation Adjustment Amount	N/A	N/A	**For dispatchable *delivery points*:** $(GRP - EMP_h^{m,t}) \times AQEI_{k,h}^{m,t}$ **For non-dispatchable *delivery points*:** $(GRP - HOEP_h) \times \Sigma^T AQEI_{k,h}^{m,t}$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.	Interval or Hourly	Due OPG	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
145	Regulated Hydroelectric Generation Adjustment Amount	N/A	N/A	$NEMSC_{k,H} - \{ \sum_H^{M,T} [(MWAvg_T \times GRP) + ((AQEI_{k,h}^{m,t} - AQEW_{k,h}^{m,t}) - MWAvg_T) \times EMP_h^{m,t}] \}$ Where 'M' is the set of all *delivery*	Monthly	Due OPG	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to *OEB* regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				points 'm' of OPG's regulated hydroelectric generating stations. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. 'H' is the set of all *settlement hours* 'h' in the month. MWAvg is the average hourly net energy production within a given month.							
146	Global Adjustment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 146 END DECEMBER 31, 2010. *CHARGE TYPE* 146 REPLACED BY *CHARGE TYPES* 147 AND 148 EFFECTIVE JANUARY 1, 2011.**</u> For Fort Frances Power Corporation Distribution Inc.: $\Sigma_{H,M,C}TD$ x $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k}$ - EEQ) / $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t} + \Sigma_{K}$	Monthly	Due MPs	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$EGEI_k$ - EEQ) For other *market participants*: $\Sigma_{H,M,C}$TD x ($\Sigma_H^{M,T}$ $AQEW_{k,h}^{m,t}$ + $EGEI_k$) / ($\Sigma_{K,H}^{M,T}$ $AQEW_{k,h}^{m,t}$ + Σ_K $EGEI_k$ - EEQ) Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'C' is the set of the following *charge types* 'c': **193, 194, 195, 197, 198, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1450, 1460, 1461, 1462 and 1464.**							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
147	Class A – Global Adjustment Settlement Amount	N/A	N/A	$\Sigma_{H,M,C}TD * PDF_{k,m,d}$ Where 'd' is the ratio of the number of days in the month the Peak Demand Factor was effective compared to the total number of days in the month and 'C' is the set of the following *charge types* 'c': **193, 194, 195, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1466, 1450, 1460, 1461, 1462, 1464, 1468, 1469, 1471, 1472, 1473, 1474.**	Monthly	Either Way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
148	Class B – Global Adjustment Settlement Amount	N/A	N/A	For Fort Frances Power Corporation Distribution Inc.: $(\Sigma_{H,M,C}TD - TD_{147})x$ $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k} - EEQ)$ / Class B Load For other Class B *Market Participant*s and Distributors: $(\Sigma_{H,M,C}TD - TD_{147})$ x	Monthly	Either Way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$(\Sigma_H^{M,T} AQEW_{k,h}^{m,t} + EGEI_k - GA - AQEW_{g,k,h,M}^{m,t} - PGS_{h,M})$/ Class B Load Class B Load = $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t} + \Sigma_K EGEI_k - \Sigma_K EEQ - \Sigma_K GA - AQEW_{g,k,h,M}^{m,t} - \Sigma_K PGS_{h,M})$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'C' is the set of the following *charge types* 'c': **193, 194, 195, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1466, 1450, 1460, 1461, 1462, 1464, 1468, 1469, 1471, 1472, 1473, 1474.**							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
149	Regulated Price Plan Retailer Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement form "Retailer Payments for Contract Price vs. HOEP for Regulated Consumers with a Retail Contract".	Monthly	Due LDCs	13	N/A	N/A	N/A	Implementation details subject to government regulation.
150	Net Energy Market Settlement Uplift	N/A	9.3.9.1	$\sum_C^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following *charge types* 'c' as follows: **100, 101, 103, 104, 1131** 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the NEMSC component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a	Hourly	Either Way	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
155	Congestion Management Settlement Uplift	N/A	9.3.5.2 and 9.3.5.7	$\sum_{c}^{M,T} TD_{k,h,(105, 106, 107, 108,122, 1050, 1051)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals*'t' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the CMSC component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly or Monthly (see 9.3.5.7)	Either Way	13	N/A	0	13	Pursuant to market rules, Section 9.3.5.7, during an interim period, the disbursements of charge type 105 amounts adjusted as per Section 9.3.5.6 may be made on a monthly basis.
161	Northern Pulp and Paper Mill Electricity Transition Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,111}$ Where 'k' is part of a subset of eligible *market participants* 'k'.	Quarterly	Due *IESO*	0	N/A	N/A	N/A	This program ends on September 30, 2010.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
162	Ontario Power Generation Rebate Debit	N/A	N/A	**<u>** CALCULATIONS FOR *CHARGE TYPE* 162 END April 30, 2009 **</u>** Payment (n) = $\sum_H$ [(HOEP$_h$ – ORL) x (ONPAO$_h$ x 0.85 – PAA) + (PAP – PAORL) x PAA)] OPG rebate (n) = Max [0, Payment (n) – Payment (n-1) + NCF (n-1)] Where: 'H' is the set of all *settlement hours* 'h' from May 1, 2006 to the end of the applicable quarter. 'n' is the current quarter. 'n-1' is the previous quarter. NCF is the negative amount carried forward and calculated as NCF (n) = Min [0, Payment (n) – Payment (n-1) + NCF (n-1)]	May 1, 2006 to April 30, 2009	Due *IESO*	N/A	N/A	N/A	N/A	The OPG rebate quarterly payment will be based on a cumulative calculation commencing May 1, 2006 to the end of each quarter less the same cumulative calculation to the end of the previous quarter. Where the payment formula results in an amount owing to OPG for any quarter, no such payment will be made to OPG and any such amount will be carried forward into subsequent quarters.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
163	Additional Compensation for Administrative Pricing Debit.	N/A	7.8.4A.16 or 7.8.4A.10 or 7.13.6.2, and 9.4.8	$\sum_{c,H}^{M,T} TD_{k,H,(113)}$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$) / $\sum_{k,H}^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	This charge will still be used for market suspension events.
164	Outage Cancellation/ Deferral Debit.	N/A	5.6.7.4 and 9.4.8.1.3	$\sum_{c,H}^{M,T} TD_{k,H,(114)}$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$) / $\sum_{k,H}^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* H.	Monthly	Due *IESO*	13	N/A	0	13	
165	Unrecoverable Testing Costs Debit	N/A	9.4.8.1.1 and 4.5.3.4	= $\sum_{H,c}^{M,T} TD_c$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$) / $\sum_{k,H}^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
166	Tieline Reliability Maintenance Debit	N/A	9.4.8.1.2 and 5.5.3.4	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
167	Emergency Energy Debit	N/A	9.4.8.1.5 9.4.2.3A and 5.2.3.3A	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'c' is any payments made for *emergency energy* during the applicable period. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
168	TR Market Shortfall Debit	N/A	9.4.8.1.7 and 9.6.14.5.2	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement*	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				hours 'H'.							
169	Station Service Reimbursement Debit	N/A	9.4.8.1.6 and 9.2.1A.12.2 (a)	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
170	Local Market Power Rebate	N/A	9.4.8.2.2 9.4.8.2.3 9.3.8A.5 9.3.8A.6 and Ch. 7, Appendix 7.6	$= \sum_{H,C}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'c' denotes *charge type* 120 and that portion of *charge type* 130 related to the IOG OFFSET *settlement amount*. Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due MP	13	N/A	0	13	
171	Northern Industrial Electricity Rate Program Balancing	N/A	N/A	$\Sigma_K TD_{k,121}$ Where 'k' is part of a subset of	Quarterly	Due *IESO*	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			eligible *market participants* 'k'.							
183	Generation Cost Guarantee Recovery Debit	N/A	9.4.8.1.9	$= \sum_{H,C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following *charge types* 'c' as follows: **133** 'H' is the set of all *settlement hours* 'h' in the month. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	*IESO*	13	N/A	0	13	
184	Demand Response Debit	N/A	9.4.7C 9.4.7F	$\sum_{k,H,} (TD_{134}) \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'H' is all *settlement hours* 'h' during the *billing period.*	Monthly	Either way	13	N/A	0	5	TDRP and ELRP suspended by the *IESO.*
186	Intertie Failure Charge Rebate	$HUSA_{k,h}$	9.3.9.1	$\sum_{C}^{M,T} TD_{c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following *charge types* 'c' as follows:	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				135, 136, 1134, 1135, 1136 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the IFCR component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
190	Fixed Energy Rate Balancing Amount	N/A	N/A	**** *CHARGE TYPE* 190 REPLACED BY *CHARGE TYPE* 192 EFFECTIVE JANUARY 1, 2005 **** $\sum_{k,H,c} (TD_{140})$ Where: 'H' is all *settlement hours* 'h' during the *trading day* for all *trading days* during the interim period beginning December 1, 2002.	Hourly (type 'DP' records only. See: "Format Spec. for Settlement Statement Files and Data Files" for further details)	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
191	Fixed Wholesale Charge Rate Balancing Amount	N/A	N/A	**** CALCULATIONS FOR *CHARGE TYPE* 191 END MARCH 31, 2005 **** $\Sigma_{k,H,c}$ (TD_{141}) Where: 'H' is all *settlement hours* 'h' during the *billing period*.	Monthly	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
192	Regulated Price Plan Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,142}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,142}$ is the total *settlement amount* of *charge type* 142 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
193	NUG Contract Adjustment Balancing Amount	N/A	N/A	TD_{143}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
194	Regulated Nuclear Generation Balancing Amount	N/A	N/A	TD_{144}	Interval or Hourly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
195	Regulated Hydroelectric Generation Balancing Amount	N/A	N/A	TD_{145}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to *OEB* regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
196	Global Adjustment Balancing Amount	N/A	N/A	$\Sigma_{K,}TD_{k,147,\ 148}$ -$\sum$197 Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,147,\ 148}$is the *settlement amount* of *charge type* 147 and 148 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
197	Global Adjustment - Special Programs Balancing Amount	N/A	N/A	$\Sigma_K\ TD_{k,1466}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1466}$ is the *settlement amount* of *charge type* 1466 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
198	Renewable Generation Balancing Amount	N/A	N/A	**<u>** CALCULATIONS FOR *CHARGE TYPE* 198 END DECEMBER 31, 2010 **.</u>** $\Sigma_K\ TD_{k,148}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,148}$ is the *settlement amount* of *charge type* 148 for the month for *market participant* 'k'.	Pending	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
199	Regulated Price Plan Retailer Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,149}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,149}$ is the *settlement amount* of *charge type* 149 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
200	10 Minute Spinning Reserve Market Settlement Credit	ORSCk,h	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,hm,t} \times PROR_{r,hm,t}$	Interval	Due MP	13	13	N/A	N/A	
201	10 Minute Spinning Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(251)} \times [(AQEW_{k,h}^{m,t} + SQEW_h^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
202	10 Minute Non-spinning Reserve Market Settlement Credit	$ORSC_{k,h}$	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,h}^{m,t} \times PROR_{r,h}^{m,t}$	Interval	Due MP	13	13	N/A	N/A	
203	10 Minute Non-spinning Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_{c}^{M,T} TD_{k,h,(253)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} -$	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$BCQ_{s,k,h}^{m,t}$]							
204	30 Minute Operating Reserve Market Settlement Credit	$ORSC_{k,h}$	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,h}^{m,t} \times PROR_{r,h}^{m,t}$	Interval	Due MP	13	13	N/A	N/A	
205	30 Minute Operating Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_{c}^{M,T} TD_{k,h,(255)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
250	10 Minute Spinning Market Reserve Hourly Uplift	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(200)}$ x [$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})$] Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly	Due *IESO*	13	N/A	0	13	
251	10 Minute Spinning Market Reserve Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞.	Interval	Due *IESO*	13	13	N/A	N/A	
252	10 Minute Non-spinning Market Reserve	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(202)}$ x [$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}$	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Hourly Uplift			+ $RQ_{k,h}^{m,t}$) / $\sum_k^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
253	10 Minute Non-spinning Market Reserve Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞	Interval	Due *IESO*	13	13	N/A	N/A	
254	30 Minute Operating Reserve Market Hourly Uplift	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(204)}$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$ + $RQ_{k,h}^{m,t}$) / $\sum_k^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'T' is the set of 12 *metering*	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
255	30 Minute Operating Reserve Market Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞	Interval	Due *IESO*	13	13	N/A	N/A	
400	Black Start Capability Settlement Credit	N/A	9.4.2.2	Manual Entry as per 9.4.2.2	Monthly	Due MP	13	N/A	N/A	N/A	
404	Regulation Service Settlement Credit	N/A	9.4.2.3	Manual Entry as per 9.4.2.3	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
406	Emergency Demand Response Program Credit	N/A	9.4.2.3A	Manual Entry as per 9.4.2.3A	Monthly	Due MP	N/A	N/A	N/A	N/A	EDRP no longer contracted by the *IESO*.
410	*IESO-Controlled Grid* Special Operations Credit	N/A	5.8.2.6	Manual Entry as per 5.8.2.6	Monthly	Either way	13	N/A	N/A	N/A	
450	Black Start Capability Settlement Debit	N/A	9.4.2.2	$= \sum_{H,c}^{M,T} TD_{h,(400)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,.h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
451	Hourly Reactive Support and Voltage Control Settlement Debit	N/A	9.4.2.4	$= \sum_{C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is the set of the following charge types 'c' as follows: **1401, 1402, 1404, 1405, 1451** Where 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'.	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
452	Monthly Reactive Support and Voltage Control Settlement Debit	N/A	9.4.2.4	$= \sum_{H,C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is the set of the following charge types 'c' as follows: **1403, 1406, 1407, 1408, 1409, 1417** Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
454	Regulation Service Settlement Debit	N/A	9.4.2.3	$= \sum_{H,c}^{M,T} TD_{h,(404)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
460	*IESO*-Controlled Grid Special Operations Debit	N/A	5.8.2.6	$= \sum_{H,c}^{M,T} TD_{h,(410)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all	Monthly	Either way	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				settlement hours 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.							
500	Must Run Contract Settlement Credit	N/A	9.4.2.1	Manual Entry as per 9.4.2.1	Monthly	Due MP	13	N/A	N/A	N/A	
550	Must Run Contract Settlement Debit	N/A	9.4.2.1	$= \sum_{H,c}^{M,T} TD_{h,(500)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
600	Network Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{650})$ Where 'H' is the set of the *settlement hours* 'h' in the month during which the Network Service Demand occurs at every *delivery point* defined for Transmission Network Service charges.	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
601	Line Connection Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{651})$ Where 'H' is the set of all *settlement hours* 'h' in the month	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				during which the Line Connection Service Demand occurs at every *delivery point* defined for Transmission Line Connection Service charges.							
602	Transformation Connection Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{652})$ Where 'H' is the set of all *settlement hours* 'h' in the month during which the Transformation Connection Demand occurs at every *delivery point* defined for Transmission Transformation Connection Service charges.	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
603	Export Transmission Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{653}^{i})$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'i' is an *intertie metering point* 'i' where an export transaction occurred during the month Each *charge type* 603 line detail record line item is therefore totaled on the basis of TD_{653} per *intertie metering point* 'i' per month.	Monthly	Due applicable *transmitter*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
650	Network Service Charge	N/A	9.4.1 / 9.4.3	$NSD_{k,h}^{m}$ x PTS-N	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				The Billing Demand for Network Transmission Service (kW) is defined as the higher of: Transmission customer coincident peak demand (kW) in the hour of the month when the total hourly demand of all PTS customers is highest for the month; and 85% of the customer peak demand in any hour during the peak period.							Rate Order".
651	Line Connection Service Charge	N/A	9.4.1 / 9.4.3	$LCD_{k,h}^{m}$ x PTS-L Where 'h' is the *settlement hour* of the current *billing period* in which $LCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
652	Transformation Connection Service Charge	N/A	9.4.1 / 9.4.3	$TCD_{k,h}^{m}$ x PTS-T Where 'h' is the *settlement hour* of the current *billing period* in which $TCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
653	Export Transmission Service Charge	N/A	9.4.1 / 9.4.3	$\sum_{H}^{T} SQEW_{k,h}^{i,t}$ x ETS Where 'H' is the set of all *settlement hours* 'h' in the month.	Monthly	Due *IESO*	13	N/A	0	13	Subject to the OEB "Ontario Transmission Rate Order".

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'T' is the set of all *metering intervals* 't' during the set of *settlement hours* 'H'.							
700	Dispute Resolution Settlement Credit	N/A	3.2.7	Manual Entry as per 3.2.7	Monthly	Due MP	13	13	0	13	Note: tax would follow original disputed transaction
702	Debt Retirement Credit	N/A	9.4.6	$\Sigma_{k,H,c}\, TD_{752}$	Monthly	Due Ministry of Finance	0	N/A	N/A	N/A	Ontario Regulations 493/01 and 494/01 See Ministry of Energy website for details.
703	Rural and Remote Settlement Credit	N/A	9.4.4	Manual Entry as per Reg	Monthly	Due MP as per Reg	13	N/A	N/A	N/A	Ontario Regulation 442/01 See Ministry of Energy website for details.
704	OPA Administration Credit	N/A	N/A	$\Sigma_K\, TD_{k,754}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,754}$ is the *settlement amount* of *charge type* 754 for the month for *market participant* 'k'.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Implementation details subject to government regulation.
750	Dispute Resolution Settlement Debit	N/A	3.2.7	Manual Entry as per 3.2.7.	Monthly	Due *IESO*	13	13	0	13	Note: tax would follow original disputed transactions

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
751	Dispute Resolution Board Service Debit	N/A					13	13	13	13	
752	Debt Retirement Charge	N/A	9.4.6	$AQEW_{k,h}^{m,t}$ x TP Where 'k' is part of a subset of *market participants* meeting the criteria of any government regulation defining the ultimate *consumers* of *energy*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Ontario Regulations 493/01 and 494/01 See Ministry of Energy website for details.
753	Rural and Remote Settlement Debit	N/A	9.4.4	$AQEW_{k,h}^{m,t}$ x TP	Monthly	Due *IESO*	13	N/A	N/A	N/A	Ontario Regulation 442/01 See Ministry of Energy website for details.
754	OPA Administration Charge	N/A	N/A	$\Sigma_H^T AQEW_{k,h}^{m,t}$ x TP Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. Where TP is the rate ($/MWh) for the *OPA* Administration Charge set by *OEB*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
850	Market Participant Default Settlement	N/A	2.8.6	Manual Entry as per 2.8.6	Monthly	Due *IESO*	13	13	13	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Debit (recovery)										
851	Market Participant Default Interest Debit	N/A	2.8.3, 2.8.5	Manual Entry as per 2.8.3 and 2.8.5	Monthly	Due *IESO*	N/A	N/A	N/A	N/A	
900	GST/HST Credit	N/A	N/A	$\sum_C TD_{k,c}$ A summation of all Goods and Services Tax Credits or Harmonized Sales Tax Credits payable to *market participant* 'k' across all *charge types* 'c'. Where 'C' is the set of all *charge types* 'c'.		Due MP	N/A	N/A	N/A	N/A	Only appear as "SC" record types.
950	GST/HST Debit	N/A	N/A	$\sum_C TD_{k,c}$ A summation of all Goods and Services Tax Debits or Harmonized Sales Tax Debits payable *by market participant* 'k' across all *charge types* 'c'. Where 'C' is the set of all *charge types* 'c'.		Due *IESO*	N/A	N/A	N/A	N/A	Only appear as "SC" record types.
1050	Self-Induced Dispatchable Load CMSC Clawback	N/A	9.3.5.1A	**BUSINESS RULES** are used in conjunction with the definitions below to specify the criteria by which the *IESO* will recover *constrained off*	Interval	Due *IESO*	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				CMSC paid to *dispatchable load* facilities. **Business Rule 1 – Materiality:** *Constrained off* CMSC is allowed for an interval during a *constrained off* event if the total amount of CMSC paid for the trade day to that *dispatchable load* is less than $4000. The daily total includes negative CMSC. **Business Rule 2 – Non-Dispatchable Portion of Load:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the CMSC is paid for portions of the dispatch where the load has bid greater than or equal to MMCP, indicating that it is a non-dispatchable in that range. $[-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) – MAX (-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL), -1 OP(EMP_h^{m,t},AQEW_{k,h}^{m,t}, BL)] –$ $[-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) – MAX (-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL),-1OP (EMP_h^{m,t},AQEW_{k,h}^{m,t}, BL), -$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$1OP(EMP_h^{m,t}, MC_h^m, BL)]$ Where 'MC' is minimum consumption level and is equal to the quantity in the price quantity pair where the bidding price is MMCP (i.e., $2000). This business rule applies unless CMSC is allowed because of materiality (defined by Business Rule 1). **Business Rule 3 – Dispatch Deviation:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the current 5-minute constrained schedule exceeds the revenue meter value in the previous interval plus 2.5 minutes of ramping. This business rule applies unless CMSC is allowed because of: • Materiality (defined by Business Rule 1); or • The load has been *constrained off* economically (defined below – 'Economically *constrained off* interval'); or • Operating reserve has been							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				activated (defined below – 'Operating Reserve Activation interval'); or • The load is ramping (defined below – 'Ramping interval'); or • The load has been manually dispatched down for reliability (defined below – 'Manual Dispatch for Reliability'). **Business Rule 4 – Facility off-line or unable to follow dispatch instructions:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the constrained schedule is 0 MW and the consumption is less than 1 MW, or if the consumption is 0 MW. This business rule applies unless CMSC is allowed because of : • Materiality (defined by Business Rule 1); or • The load has been *constrained off* economically (defined below – 'Economically *constrained off* interval'); or • Operating reserve has been activated (defined below –							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'Operating Reserve Activation interval'); or • The load has been manually dispatched down for reliability (defined below – 'Manual Dispatch for Reliability'). In addition to the Business Rules 1 to 4 described above, *constrained off* CMSC is not allowed for hour 'h' if a *dispatchable load* changes its *energy bid* that results in a change in the *facility's market schedule* and the ramping up or down of the *dispatchable load*. **DEFINITIONS** – There are a number of definitions that are used in the specification of criteria for recovery of *constrained off* CMSC paid to dispatchable load facilities. These are: **Constrained-off event**: A *constrained off* event comprises one or more consecutive intervals where the *market schedule* is greater than the constrained schedule and the *market schedule* is greater than the actual quantity of energy withdrawn. Both conditions must exist to be considered a *constrained off* event.							The decision rule for ramping up or down is described in Market Manual 5.5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.9.3.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Economic Constrained–off interval: A *dispatchable load* is considered to be 'economically *constrained off*' in an interval if the relevant nodal price is greater than or equal to the *bid* price for either the current interval, the next interval or the previous interval. The inequality should be applied to the last MW *constrained off*. **Operating Reserve Activation Interval (ORA)**: A *dispatchable load* is considered to be dispatched in an interval as part of an activation of *operating reserve* if one or more of the following conditions exist: a. The constrained schedule is labeled with the reason code 'ORA'. b. The interval is 1-3 intervals before an interval with the 'ORA' code. c. The interval is 1-3 intervals after an interval with the 'ORA' code. **Ramping Interval**: A *generation unit* is considered to be ramping up or ramping down when the unconstrained schedule differs between consecutive hours. A							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				dispatchable load is considered to be 'ramping' in an interval if one of the following exist: a. It is one of the first 3 intervals of the second hour when ramping up. b. It is one of the last 3 intervals of the first hour when ramping down. **Manual Dispatch for Reliability**: A *dispatchable load* is considered to be a 'manually *constrained off* for reliability' if the *IESO* Control Room logs indicate that the *IESO* needed to constrain off the load for system or for local requirements.							
1051	Ramp-Down CMSC Claw Back	$RDCB_{k,h}$	9.3.5.1G	$RDCB_{k,h}^{m,t} = -1 \times TD_{k,h,105}^{m,t}$ (See applicable *market manual*)	Interval	Either Way	13	N/A	N/A	N/A	Conditions for the Ramp-Down CMSC Claw Back are described in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.31.
1130	Day-Ahead Intertie Offer	$DA_IOG_{k,h}$	9.3.8A.2A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1130 END</u>	Hourly	Due MP	N/A	13	13	13	Subject to IOG OFFSET process

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Guarantee Settlement Credit			**OCTOBER 12, 2011. *CHARGE TYPE* 1130 REPLACED BY *CHARGE TYPE* 1131 EFFECTIVE OCTOBER 13, 2011.** The Day-Ahead Intertie Offer Guarantee *settlement amount* is derived as follows: For all day-ahead import transactions other than those that are subject to a *constrained on event* in the *real-time market:* $\sum^{I}$ (-1) * MIN[0, $\sum^{T}$OP($EMP_h^{i,t}$, MIN($PDR_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $PDR_BE_{k,h}^{i,t}$) + $TD_{k,h,105}^{i}$] Or, in the case of an import transaction subject to a *constrained on event* in the *real-time market:* $\sum^{I}$ (-1) * MIN[0, $\sum^{T}$OP($EMP_h^{i,t}$, MIN($PDR_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $PDR_BE_{k,h}^{i,t}$) + $OPE\{adj\}_{k,h}^{i,t}$] See 9.3.8A.2A for the definition of the Operating Profit (OP) function referenced above. Where: 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering*							under the provisions of 9.3.8A.3 (see also, entry for *charge type* 130 for further details)

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h'. $TD_{k,h,105}^{i}$ is that component of *charge type* 105 ("Congestion Management Settlement Credit for Energy") applicable to *market participant* 'k' at *intertie metering point* 'i' during *settlement hour* 'h'.							
1131	Intertie Offer Guarantee Settlement Credit	$IOG_{k,h}$	9.3.8A	The Day-Ahead Intertie Offer Guarantee *settlement amount* is derived as follows: $\sum_{I}$ MAX[0, $\sum^{T}$ (DA_IOG_COMP1 + DA_IOG_COMP2 – DA_IOG_COMP3)] Where **DA_IOG_COMP1:** -1 x OP($EMP_{h}^{i,t}$, MIN($DA_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $DA_BE_{k,h}^{i,t}$) **DA_IOG_COMP2:** $XDA_BE_{k,h}^{i,t}$ – MAX(0, $XBE_{k,h}^{i,t}$) **DA_IOG_COMP3:** Component 3 is calculated when: the CMSC for energy ($TD_{k,h,105}^{m,t}$) for the same metering interval is a value other than zero. For Component 3 (DA_IOG_COMP3), the six scenarios of the possible orderings of the	Hourly	Due MP	N/A	13	N/A	N/A	

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				generator's DA_DQSI, DQSI and MQSI are as follows: 1. DQSI >= MQSI >= DA_DQSI 2. MQSI >= DQSI >= DA_DQSI 3. DQSI > DA_DQSI > MQSI 4. MQSI > DA_DQSI > DQSI 5. DA_DQSI >= DQSI > MQSI 6. DA_DQSI >= MQSI > DQSI Scenario 1 and 2: 0 Scenario 3: $OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE)$ Scenario 4: $OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, DQSI_{k,h}^{i,t}, BE)$ Scenario 5 and 6: $TD_{k,h,105}^{m,t}$ Where 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8A.2. $XDA_BE_{k,h}^{i,t} = (-1) * [OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{m,t}, DA_BE) - OP(EMP_h^{i,t}, \min(DA_DQSI_{k,h}^{m,t}, DQSI_{k,h}^{m,t}, DA_BE)]$ $XBE_{k,h}^{i,t} = (-1) * [OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, \min(DA_DQSI_{k,h}^{i,t}, DQSI_{k,h}^{i,t}, BE)]$ Where $EMP_h^{i,t} = 0$ The Intertie Offer Guarantee *settlement amount* is derived from an hourly *Energy* Import sub component ($EIM_{k,h}$) as follows: $RT\text{-}IOG_{k,h} = EIM_{k,h}$ The Real-Time Intertie Offer Guarantee ($RT\text{-}IOG_{k,h}$) *settlement amount* is derived as follows: $\sum_I (-1)*MIN[0, \sum^T OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE)]$ Where 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8A.2. The IOG_OFFSET component of this *charge*							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				type is calculated as follows: **The Day-Ahead IOG rate:** DA_IOG_RATE = IF [DA_IOG is not NULL, DA_IOG / min(DA_DQSI, DQSI), 0] **The Real-Time IOG rate:** RT_IOG_RATE = IF[RT_IOG is NULL, 0, RT_IOG/DQSI] **The matrix is arranged in ascending order on DA_IOG_RATE and the day-ahead import quantities are offset against the day-ahead export schedule quantities:** DA_DQSW_REM = [MAX[0, DA_OFFSET_DQSW)]] DA_OFFSET_DQSW = MIN[DA_DQSI, DQSI, DA_DQSW_REM] **The day-ahead IOG offset flag:** DA_OFFSET_FLAG = IF(DA_OFFSET_DQSW > [50% X MIN(DA_DQSI,DQIS)],Y,N) **The IOG offset rate:** IOG_SETTLEMENT_RATE = IF[DA_OFFSET_FLAG = 'Y', RT_IOG_RATE, MAX(RT_IOG_RATE, DA_IOG_RATE)]							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Subject to: MI[n,9] >= MIN[n-1,9] MI[1,9] = MIN[MI[1 to N,9]] MI[1 to N,9] <> 0 **The Gross IOG amount:** IOG = IOG dollar amount associated with the used to calculate IOG_SETTLEMENT_RATE **The matrix is arranged in ascending order on IOG_SETTLEMENT_RATE and the real-time import quantities are offset against the real-time export schedule quantities:** RT_DQSW_REM = [MAX[0, DQSW – RT_OFFSET_DQSW)]] RT_OFFSET_DQSW = MIN[DQSI, RT_DQSW_REM] **The IOG offset settlement amount:** IOG_OFFSET = (IOG_SETTLEMENT_RATE * RT_OFFSET_DQSW) **The IOG settlement amount:** NET_IOG = (IOG – IOG_OFFSET)							
1133	Day-Ahead Generation Cost Guarantee	$DA_GCG_{k,h}$	9.4.7D	****CALCULATIONS FOR *CHARGE TYPE* 1133 END**	Hourly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Payment			**OCTOBER 12, 2011.** Dispatchable *delivery points:* MAX[0, (DA_CGC + DA_COST - $\sum^{T}EMP_{h}^{m,t}$ x AQEI{limited}$_{k,h}^{m,t}$ – $\sum^{T}$ CMSC REV$_{k,h,}^{m,t}$] **Subject to:** AQEI{limited}$_{k,h}^{m,t}$ = MIN[AQEI$_{k,h}^{m,t}$, *minimum loading point*] Where 'DA_CGC' is a Day-Ahead *Combined Guaranteed Costs* variable, assessed in accordance with the applicable *market manual* (see also Section 2.1 "Variable Description"). Where 'm' is *delivery point* 'm' at which the *generation unit* incurring the relevant costs is located. Where 'T' is a set of *metering intervals* 't' from a valid start time to the end of *minimum generation block run-time.* Where AQEI{limited}$_{k,h}^{m,t}$ shall								

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				denote all allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point*. Where DA_COST is fuel and O&M cost component related to operation of the *generation unit* at its *minimum loading point* during its *minimum generation block run-time* (these costs are calculated based on the *offer* price associated with Pre-dispatch of record). $DA_COST_k = \Sigma^{T^*_{H2}} COST(AQEI\{limited\}_{k,h}^{m,t}, PDR_BE_{k,h}^{m,t})$ A. Where the COST function is defined as follows:							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$COST(Q,B) = \sum_{i=1}^{s^*} P_i \cdot (Q_i - Q_{i-1})$ *where:* • B is the n x 2 matrix (B) of offered *price-quantity pairs* (P_i , Q_i) • s* is the highest indexed row of B such that $Q_{s^*-1} \leq Q \leq Q_{s^*}$ and where $Q_0=0$ *B.* Where H2 is the set of all *settlement hours* 'h' during the period from the *Pre-dispatch of Record* 'start hour' until the end of *minimum generation block run* C. Where 'T*' is the set of metering intervals 't' in the set of all settlement hours 'H2' Where $CMSC_REV_{k,h}^{m,t}$ is any real-time $CMSC(TD_{k,h,105}^{m,t})$ payment associated with allocated quantities in MWh of *energy* injected at *delivery point* 'm'							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point*. CMSC_REV is calculated using the following rules: 1) Real-time CMSC ($TD_{k,h,105}^{m,t}$) for the same interval is greater than zero. 2) If $MQSI_{k,h}^{m,t}$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) >= MLP, then $CMSC_REV_{k,h}^{m,t} = 0$. 3) In the case of a *constrained-off event*: a. If $MQSI_{k,h}^{m,t} < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} >= MLP$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) <= MLP, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t},MLP,BE) – OP(EMP,max(DQSI_{k,h}^{m,t},AQEI_{k,h}^{m,t}),BE)$. 4) In the case of a *constrained-*							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				on event: a. If $MQSI_{k,h}^{m,t} < MLP$ and $\min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} <= MLP$ and $\min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) >= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_{h}^{m,t}, MLP, BE)$ (See applicable *market manual*)							
1134	Day-Ahead Linked Wheel Failure Charge	$DA_LWFC_{k,h}$	9.3.8E	$MAX\left[(-1) * \left[(DA_LWSD_{k,h}^{i}) * MAX[0,(DA_PS_{k,h}^{i} - PD_PS_{k,h}^{i})]\right], (RT_IFC_DALW_{k,h}^{i} + RT_EFC_DALW_{k,h}^{i})\right]$ Where: $DA_LWSD_{k,h}^{i,t} = MAX[MAX(DA_DQSI_{k,h}^{i,t} - PD_DQSI_{k,h}^{i,t}, DA_DQSW_{k,h}^{i,t} - PD_DQSW_{k,h}^{i,t}), 0]$	Hourly	Due *IESO*	N/A	13	13	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$RT_IFC_DALW_{k,h}^{i} = \sum^{I,T} (-1) * MIN[MAX[0, (EMP_h^{m,t} + PB_IM_h^{t} – PD_EMP_h^{m,t}) * MAX (DA_DQSI_{k,h}^{i,t} – PD_DQSI_{k,h}^{i,t}, 0)], (MAX(0, EMP_h^{m,t})* MAX (DA_DQSI_{k,h}^{i,t} – PD_DQSI_{k,h}^{i,t}, 0))]$ $RT_EFC_DALW_{k,h}^{i} = \sum^{I,T} (-1) * MIN[MAX[0, (PD_EMP_h^{m,t} – EMP_h^{m,t} – PB_EX_h^{t}) * MAX (DA_DQSW_{k,h}^{i,t} – PD_DQSW_{k,h}^{i,t}, 0)], (MAX(0, PD_EMP_h^{m,t}) * MAX (DA_DQSW_{k,h}^{i,t} – PD_DQSW_{k,h}^{i,t}, 0))]$ Where: 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1135	Day-Ahead Import Failure Charge	$DA_IFC_{k,h}$	9.3.8B	$\sum^{I,T}$ (-1) * MIN[MAX[0, $OP(PD_EMP_h^{m,t}, DA_DQSI_{k,h}^{i,t}, DA_BE_{k,k}^{i,t})$ – $OP(PD_EMP_h^{m,t}, PD_DQSI_{k,h}^{i,t}, DA_BE_{k,k}^{i,t})$] , (MAX(0, $XPD_BE_{k,h}^{i,t}$ – $XDA_BE_{k,h}^{i,t}$)], (MAX(0, $PD_EMP_h^{m,t}$)* $DA_ISD_{k,h}^{i,t}$)] Where: 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'. $DA_ISD_{k,h}^{i,t} = MAX(DA_DQSI_{k,h}^{i,t} – PD_DQSI_{k,h}^{i,t}, 0)$ $XDA_BE_{k,h}^{i,t} = (-1) * [OP(0,DA_DQSI,DA_BE) - OP(0,PD_DQSI,DA_BE)]$ $XPD_BE_{k,h}^{i,t} = (-1) * [OP(0,DA_DQSI,PD_BE) -$	Hourly	Due *IESO*	N/A	13	N/A	N/A	Subject to exemptions under the provisions of 9.3.8B.1.2

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				OP(0,PD_DQSI,PD_BE)]							
1136	Day-Ahead Export Failure Charge	$DA_EFC_{k,h}$	9.3.8D	$\sum^{I,T}$ (-1) * MIN[MAX[0,(–1)* OP($PD_EMP_h^{m,t}$, $DA_DQSW_{k,h}^{i,t}$, $DA_BL_{k,k}^{i,t}$) – (–1)* OP($PD_EMP_h^{m,t}$, $PD_DQSW_{k,h}^{i,t}$, $DA_BL_{k,k}^{i,t}$)] , (MAX(0, $XDA_BL_{k,h}^{i,t}$ – $XPD_BL_{k,h}^{i,t}$), (MAX(0, $XDA_BL_{k,h}^{i,t}$)] Where: 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'. $XDA_BL_{k,h}^{i,t}$ = [OP(0,DA_DQSW,DA_BL) - OP(0,PD_DQSW,DA_BL)] $XPD_BL_{k,h}^{i,t}$ = [OP(0,DA_DQSW,PD_BL) - OP(0,PD_DQSW,PD_BL)]	Hourly	Due *IESO*	N/A	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1137	Intertie Offer Guarantee Reversal	**Context 1:** IOG_REV$_{k,h}$ **Context 2:** DA_IOG{adj}$_{k,h}^{i}$	9.3.8A.1.2 and 9.3.8A.7 to 9.3.8A.9	****CALCULATIONS FOR *CHARGE TYPE* 1137 END OCTOBER 12, 2011.** **NOTE**: This *charge type* is used in two separate contexts as follows: **Context 1:** When a day-ahead Intertie Offer Guarantee and a real-time Intertie Offer Guarantee apply to the same import transaction, the lower of the two is reversed by this *charge type*. $-1 \times TD_{k,h,c}^{i}$ Where: 'c' is *charge type* 130 or 1130 as the case may be such that: $TD_{k,h,c}^{i} = MIN (TD_{k,h,130}^{i}, TD_{k,h,1130}^{i})$ **Context 2:** In cases where this *charge type* is used for the purposes of applying the intertie offer guarantee adjustment (DA_IOG{adj}$_{k,h}^{i}$), the *settlement amount* applied is DA_IOG{adj}$_{k,h}^{i}$ and is calculated as follows: $DA_IOG\{adj\}_{k,h}^{i} = MAX [0 , IOG_FV_{k,h}^{i} - TD_{k,h,100}^{i} - MAX(TD_{k,h,1130}^{i}, TD_{k,h,130}^{i}) - TD_{k,h,105}^{i}]$ Where: $TD_{k,h,100}^{i}$, $TD_{k,h,1130}^{i}$, $TD_{k,h,130}^{i}$ and $TD_{k,h,105}^{i}$ are the *settlement amounts* for *charge types* 100, 1130, 130 and 105	**Context 1:** Hourly **Context 2:** Hourly, but reported on the last *trading day* of the *billing period*	**Context 1:** Due *IESO* **Context 2:** Due MP	N/A	13	13	13	**Note:** Context 1 and Context 2 can both be applied to the same import.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				respectively, that are applicable to *market participant* 'k' during *settlement hour* 'h' at *intertie metering point* 'i'.							
1138	Day-Ahead Fuel Cost Compensation Credit	$DA_FCC_{k,h}$	9.4.7E	Manual entry as per 9.4.7E.2	Hourly	Due MP	13	N/A	N/A	N/A	
1139	Intertie Failure Charge Reversal	$IFC_REV_{k,h}$	9.3.8C.6	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1139 END OCTOBER 12, 2011.**</u> When a Day-Ahead Import Failure Charge and a Real-time Import Failure Charge apply to the same import transaction, the lower of the two is reversed by this *charge type*. $-1 \times TD_{k,h,c}^{i}$ Where: 'c' is *charge type* 135 or 1135 as the case may be such that: $TD_{k,h,c}^{i} = MIN(-1 \times TD_{k,h,135}^{i}, -1 * TD_{k,h,1135}^{i})$	Hourly	Due *IESO*	N/A	13	N/A	N/A	
1188	Day-Ahead Fuel Cost Compensation Debit	$DA_FCC_U_{k,h}$	9.4.8.1.12	$= \sum_{K,H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'c' is *charge type* 1138. 'K' is the set of all *market*	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participants 'k'. 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i'. 'H' is the set of all *settlement hours* 'h' in the month. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.							
1300	Capacity Based Demand Response Program Availability Payment Settlement Amount	N/A	N/A	$= HA_H \times MCMW_h \times AAR$ Where: 'AAR' means 'Adjusted Availability Rate'. 'H' is the total hours a DRMP is available in a program month. 'HA' means 'Hours of Availability'. 'MCMW' means 'Monthly Contracted MW'.	Monthly	Due MP	13	N/A	N/A	N/A	
1301	Capacity Based Demand Response Program Availability Over-Delivery Settlement Amt	N/A	N/A	$= \sum_H (CMW_h - MCMW_h) \times AODR_h$ Applicable only in response to an 'Open Standby Notification'. Where: 'AODR' means 'Availability Over-Delivery Rate'.	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'CMW' means 'Confirmed MW'. 'H' is the set of all hours 'h' in the month where the 'CMW' exceeded the 'MCMW'. 'MCMW' means 'Monthly Contracted MW'.								
1302	Capacity Based Demand Response Program Availability Set-Off Settlement Amount	N/A	N/A	The charge to a DRMP is highest of **A**, **B** or **C:** **A: Availability Set-Off (Reliability)** $= \sum_H PSO_h \times AAR \times MCMW_h$ This formula applies when the Reliability Rate for a given Demand Response Account is less than 85% during any interval of an Activation Hour, or where the Participant is not Fully Available for Curtailment. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'H' is the set of all activation hours 'h' for the activation period. 'PSO' means 'Performance Set-Off Factor' as described in the market manual. **B: Availability Set-Off (Timely**	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Confirmation) = PSO x AAR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO*. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. **C: Availability Set-Off (Low Confirmation)** = $\sum_H$ (PSO x AAR x ($MCMW_h$ – CMW) This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Confirmed Hour of the Contracted Dispatch Period. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'CMW' has the same meaning as in CT1301. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period. 'PSO' has the same meaning as defined above.							
1303	Capacity Based Demand Response Program Utilization Payment Settlement Amount	N/A	N/A	$= [\sum_H (AAM_h \times UR_h)] - [\sum_H (NG_h \times MIN(HOEP, UR_h))]$ Where: 'AAM' (Actual Activated MWh), means the number of MWh Curtailed by a Participant when requested by the *IESO*, as measured through the use of electricity meter(s). Curtailment shall not exceed the product of the Activation MW and the activation period requested by the *IESO*, plus the lesser of an additional 15% of the	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Activation MW per hour of the activation period, OR 15 MWh per hour of the activation period. 'H' is the total hours 'h' a DRMP is activated in a program month. 'HOEP' means Hourly Ontario Energy Price. 'NG' (Net Generation), means the MWh of net electricity generated by any contributor that is a behind the meter generator. 'UR' (Utilization Rate), means the rates, expressed in $/MWh, as specified in the Demand Response Schedule.							
1304	Capacity Based Demand Response Program Utilization Set-Off Settlement Amount	N/A	N/A	The charge to a DRMP is highest of **A**, **B** or **C:** **A: Utilization Set-Off (Reliability)** $= \sum_H PSO_h \times UR \times MCMW_h$ This formula applies when the Reliability Rate for a given Demand Response Account is less than 85% during any interval of an Activation Hour. Where:	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'H' is the set of all activation hours 'h' for the activation period. 'PSO' has the same meaning as in CT 1301. 'UR' has the same meaning as in CT1303. 'MCMW' has the same meaning as in CT1300. **B: Utilization Set-Off (Timely Confirmation)** = PSO x UR x $MCMW_h$ x CDP This formula applies when the DRMP, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO*. Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'MCMW' has the same meaning as defined above.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'PSO' has the same meaning as defined above. 'UR' has the same meaning as defined above. **C: Utilization Set-Off (Low Confirmation)** $= \sum_H (PSO \times UR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the Contracted Dispatch Period. Where: 'CMW' has the same meaning as in CT1301. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period. 'MCMW' has the same meaning as defined above. 'PSO' has the same meaning as defined above. 'UR' has the same meaning as defined							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				above.							
1305	Capacity Based Demand Response Program Planned Non-Performance Event Set-Off Amt	N/A	N/A	The Planned Non-Performance Availability Set-Off applies for any day for which a participant has requested a Non-Performance Event as part of either a Single Day Non-Performance Event or a part of an Extended Period Planned Non-Performance Event. The monthly set-off calculation is the sum of all: 1. Non-Activation Day Non-Performance Availability Set-Off s and 2. Activation Day Non-Performance Availability Set-Offs. For 1.) The Non-Activation Day Non-Performance Availability Set-Off amount is: $= (AAR \times MCMW_h \times HANE_H)$ Where: 'AAR' has the same meaning as in CT1300. 'HANE' (Hours of Availability for a Non-Performance Event), represents	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the Hours of Availability for all days in the contract month for which a planned Non-Performance Event is requested and for which an Activation Notice is not received by the participant. 'MCMW' has the same meaning as in CT1300. For 2.) The Activation Day Non-Performance Availability Set-Off amount is: $= (OH \times AAR \times MCMW_h \times NEWF_H)$ Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'OH' (Opportunity Hours), means 64 if Option A is applicable to the Demand Response Account; or 32 if Option B is applicable to the Demand Response Account. 'NEWF' (Non-Performance Event Weighting Factor), means 10%, unless the Actual Activated MWh per interval, as averaged over all of the Intervals in the Contracted Dispatch Period for the Activation, is greater							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				than or equal to the product of the Monthly Contracted MW and 1/12 of an hour in which case 'NEWF' means 50%.							
1306	Capacity Based Demand Response Program Measurement Data Set-Off Settlement Amt	N/A	N/A	= MDSF x (HA_H x $MCMW_h$ x AAR) This formula applies when the complete set of weekly measurement data for a Demand Response Account are not received as per the CBDR Processing Timelines. The formula recovers a percentage of the availability payment for the applicable week. Where: 'MDSF' (Measurement Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: • 20% for the first week that the full data remains undelivered; • 33% for the second week that the full data remains undelivered; • 50% for the third week that the full data remains undelivered ; and • 100% for the fourth week that the	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered. 'AAR', 'HA' and 'MCMW' have the same meaning as in CT1300. 'H' is the total hours a DRMP is available for the applicable week.							
1307	Capacity Based Demand Response Program Buy-Down Settlement Amount	N/A	N/A	Buy-Down means the act by the DRMP chooses to reduce its Monthly Contracted MW and/or remove up to three Daily Schedules from participation in CBDR. For the Buy-Down of Monthly Contracted MW the payment is: = (MCMWR x BDR x HAE) Where: 'MCMWR' (Monthly Contracted MW Reduction), means the MW of demand reduction in the Monthly Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'HAE' (Hours of Availability Elapsed), means the number of Hours of Availability that have elapsed in the Schedule Term up to the date that the reduction takes effect.	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For the Buy-Down of the Daily Schedules the payment is: = (MCMW x RD x BDR x HAE) Where: 'BDR' has the same meaning as defined above. 'HAE' has the same meaning as defined above. 'MCMW' has the same meaning as in CT1300. 'RD' (Requested Days), means the number of Business Days per week from which the Hours of Availability are to be removed.							
1308	Capacity Based Demand Response Program Performance Breach Settlement Amount	N/A	N/A	Performance breach amounts are calculated as defined in the market manual.	Monthly	Either way	13	N/A	N/A	N/A	
1309	Demand Response Pilot – Availability Payment	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Demand Response Pilot

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1310	Demand Response Pilot – Availability Clawback	N/A	N/A	Calculated as per demand response pilot contracts.	Hourly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1311	Demand Response Pilot – Availability Charge	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1312	Demand Response Pilot – Availability Adjustment	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1313	Demand Response Pilot – Demand Response Bid Guarantee	N/A	N/A	Calculated as per demand response pilot contracts. **Notes:** - Bid guarantee as a payment is Due MP; bid guarantee as a clawback is Due IESO. Bid guarantee is calculated per unit commitment period/event.	Monthly	Either Way	13	N/A	N/A	N/A	Demand Response Pilot
1314	Demand Response Capacity Obligation – Availability Payment	N/A	N/A	$\sum_d^n DRCO_k \times DRACP$ Where 'd' is a *business day* as defined in the Market Rules Chapter 11. Where'n' is the number of	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				business days in the month in which the *settlement* is for.							
1315	Demand Response Capacity Obligation – Availability Charge	N/A	N/A	$\sum_h^n$ (-1) x Max(0, $DRCO_k$ - $DREBQ_h$) x $DRACP_h$ x $DRNPF_h$ Where'h' is an hour within the hours of availability for the day. Where 'n' is the number of hours of availability for the day.	Daily	Due IESO	13	N/A	N/A	N/A	
1316	Demand Response Capacity Obligation – Administration Charge	N/A	N/A	(-1) x Availability $Payment_m$ Where 'm'is the month that is being settled. Where 'Availability Payment' is the *settlement amount* calculated for CT1314.	Monthly	Due IESO	13	N/A	N/A	N/A	
1317	Demand Response Capacity Obligation – Dispatch Charge	N/A	N/A	(-1) x $DRSQty_h$ x $DRACP_h$ x $DRNPF_h$ Where 'h' is an hour in which the *hourly demand response* resource failed to follow its *dispatch* instruction.	Hourly	Due IESO	13	N/A	N/A	N/A	
1318	Demand Response Capacity Obligation –	N/A	N/A	(-1) x Availability $Payment_m$ Where 'm' is the month that is	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Capacity Charge			being settled. Where 'Availability Payment' is the *settlement amount* as calculated for CT1314.							
1319	Demand Response Capacity Obligation – Buy-Out Charge	N/A	N/A	$=50\% \times \sum_{d}^{n} DRBOC_k \times DRACP \times (1 - DRNPF_m)$ Where 'd' is a *business day* as defined in the Market Rules Chapter 11. Where 'n' is the range of *business days* from the buy-out effective date to the end of the *commitment period*. Where 'm' is the month that corresponds to the *business day*.	Monthly	Due IESO	13	N/A	N/A	N/A	
1330	On behalf of the former OPA for the DR2 Program - Availability Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1330 ENDED ON FEBRUARY 28, 2015.**</u> $= \sum_{H} CoMW_h \times AR \times ILSR$ Where: 'CoMW' (Contracted MW), means the MW specified in the DR2	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Schedule(s) for a given Settlement Account which the Participant agrees to Load Shift in each On-Peak Contract hour. 'AR' (Availability Rate), means the availability rate, expressed in $/MW, in the amount as specified by the OPA from time to time on the OPA Website pursuant to the DR2 Program Rules. 'H' is the total On-Peak contract hours in a Contract Month. 'ILSR' (Implied Load Shift Ratio), has the meaning as defined in OPA's DR2 Program Rules and is calculated as follows: ILSR = (-1) x [Implied Load Shift - ((3/4)(Load Shift Credit))] / Implied Load Shift Requirement							
1331	On behalf of the former OPA for the DR2 Program - Availability Set-Off Settlement	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1331 ENDED ON FEBRUARY 28, 2015.**</u> The charge to a DR participant is	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* Program Rules. The DR2 program was last settled on the February 2015 settlement statements and

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			the highest of amounts A, B or C plus amount D; where A, B and C cannot occur within an on-peak period that was subject to D. **A: Availability Set-Off (Reliability)** $= \sum_H PSO_h \times AR \times CoMW_h \times ILSR$ This formula applies when the Actual MW Reliability Ratio for a given Settlement Account is less than 95% during the Summer and Winter seasons and less than 90% during the shoulder seasons. The Actual MW Reliability Ratio, which shall not be greater than 100%, shall be calculated as follows: - For each On-Peak Contract Hour, the Actual MW Reliability Ratio is defined as the result of the baseline MW minus the actual MW divided by the confirmed MW. 'PSO' (Performance Set-Off							invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Factor) refers to a set of factors defined in the OPA DR2 Program Rules. 'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours 'h' in the On-Peak Contract period where the required reliability is not met. 'ILSR' has the same meaning as in CT1330. **B: Availability Set-Off (Timely Confirmation)** = PSO x AR x $CoMW_h$ x H x ILSR This formula applies when the Participant has failed to deliver, or delivers late, a Confirmation that is required by the IESO pursuant to the DR2 Program Rules. Where: 'PSO' has the same meaning as defined above.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours in the On-Peak Contract period. 'ILSR' has the same meaning as in CT1330. **C: Availability Set-Off (Low Confirmation)** $= \sum_H PSO \times AR \times (CoMW_h - CMW) \times ILSR$ This formula applies when the Confirmed MW is less than the product of the Required Reliability Ratio and the Contracted MW for one or more On-Peak Contract hours. Where: 'PSO' has the same meaning as defined above. 'AR' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'CoMW' has the same meaning as in CT1330. 'CMW' (Confirmed MW) means the number of MW available to shift by the Participant. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are: - Less than 95% during the Summer and Winter seasons or - Less than 90% during the shoulder seasons of the Contracted MW. 'ILSR' has the same meaning as in CT1330. **D: Availability Set-Off (Non-Performance)** $= PSO \times AR \times CoMW_h \times H \times ILSR$ This formula applies when the Participant has taken an Extended Planned Non-Performance Event or Single Day Planned Non-							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Performance Event. Where: 'PSO' has the same meaning as defined above. 'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours in the On-Peak Contract period. 'ILSR' has the same meaning as in CT1330.							
1332	On behalf of the former OPA for the DR2 Program - Utilization Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1332 ENDED ON FEBRUARY 28, 2015.**</u> The monthly Utilization Payment to a DR2 participant is the sum of the weekly utilization payments for the contract month and calculated as follows: Weekly Utilization payment	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_P \text{Max}[(\text{GHDiff} - \text{AHDiff}),0] \times \text{Min}[(\text{CoMWh} \times 1.15),(\text{Curt}_p)] \times \text{ILSR}$ Where: 'GHDiff' (Guaranteed weekly HOEP Differential), means the weekly differential rate, expressed in $/MWh, as specified by the *OPA* 'AHDiff' (Actual weekly HOEP Differential), is equal to the average actual HOEP for all hours of the useable On-Peak Contract Periods in the Week less the average actual HOEP for all hours in the Off-Peak Period for the same Week. 'CoMWh' (Contracted MWh), means the MWh specified in the DR2 Schedule(s) for a given Settlement Account which the Participant agrees to Load Shift in each On-Peak Contract Period. 'Curt' (Curtailment), means the number of MWh Curtailed by a Participant for each useable on-							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				peak contract period, and shifted to the off-peak period as measured through the use of electricity meter(s). 'P' is the total number of On-Peak Contract Periods 'p' for a Participant in a Contract Week 'ILSR' has the same meaning as in CT1330.							
1333	On behalf of the former OPA for the DR2 Program - Utilization Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1333 ENDED ON FEBRUARY 28, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C** where A, B and C cannot occur within an on-peak period that was subject to an Availability Set-Off (Non-Performance) event: **A: Utilization Set-Off (Reliability)**	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_P PSO \times Max[(GHDiff - AHDiff),0] \times CoMWh_p \times ILSR$ This formula applies when the Actual MWh Reliability Ratio for a given Settlement Account is less than 95% during the Summer and Winter seasons and less than 90% during the shoulder seasons. The Actual MWh Reliability Ratio, which shall not be greater than 100%, shall be calculated as follows: - For each On-Peak Contract Period, the Actual MWh Reliability Ratio is defined as the result of the baseline MWh minus the actual MWh divided by the product of the confirmed MW and the On-Peak Contract Hours. Where: 'PSO' (Performance Set-Off Factor) refers to a set of factors							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				defined in the *OPA's* Program Rules. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'P' is the total number of On-Peak Contract Periods 'p' for a Participant in a Contract Month. 'ILSR' has the same meaning as in CT1330. **B: Utilization Set-Off (Timely Confirmation)** $= \sum_P PSO \times Max[(GHDiff - AHDiff),0] \times CoMWh_p \times ILSR$ This formula applies when the Participant has failed to deliver, or delivers late, a Confirmation that is required by the IESO pursuant to the DR2 Program Rules.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'PSO' has the same meaning as defined above. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'P' is the total such On-Peak Contract Periods 'p' for a Participant in a Contract Month when the Participant has failed to deliver, or delivers late, a Confirmation. 'ILSR' has the same meaning as in CT1330. **C: Utilization Set-Off (Low Confirmation)** $= \sum_P$ PSO x Max[(GHDiff –							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				AHDiff),0] x (CoMWh – $CMWh_p$) x ILSR This formula applies when the Confirmed MWh are less than the product of the Required Reliability Ratio and the Contracted MWh for an On-Peak Contract Period. Where: 'PSO' has the same meaning as defined above. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'CMWh' (Confirmed MWh) means the MWh available confirmed for shifting by the Participant. 'P' is the total such On-Peak Contract Periods 'p' for a Participant in a Contract Month. 'ILSR' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1334	On behalf of the former OPA for the DR2 Program – Meter Data Set-Off Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1334 ENDED ON FEBRUARY 28, 2015.</u> $= MDSF \times (TD_{k,1330} / NoW_k)$ This formula applies when the complete set of weekly meter data for a Settlement Account is not received by 15:00 EST on the first Business Day of the following week. The formula recovers a percentage of the Availability Payment, as pro-rated for that week in question. Where: 'MDSF' (Meter Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: - 20% for the first week that the full data remains undelivered; - 33% for the second week that the full data remains undelivered; - 50% for the third week that the	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered ; and - 100% for the fourth week that the full data remains undelivered. $TD_{k,1330}$ is the *settlement amount* of *charge type* 1330 for month 'k' for the DR2 participant. 'NoW' (Number of Weeks) means the number of Weeks contained in the Contract month. 'k' is the Contract month.							
1335	On behalf of the former OPA for the DR2 Program - Buy-Down Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1335 ENDED ON FEBRUARY 28, 2015.**</u> Buy-Down means the act by the Participant of reducing its Contracted MW and/or the number of On-Peak Contract hours from participation in DR2. For the Buy-Down of Seasonal Contracted MW the payment is: = (SCMWR x BDR x CHE)	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'SCMWR' (Seasonal Contracted MW Reduction), means the MW of demand reduction in the Seasonal Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'CHE' (on-peak Contract Hours Elapsed), means the number of On-Peak Contract Hours that have elapsed in the Schedule Term up to the date that the reduction takes effect. For the Buy-Down of the number of On-Peak Contract hours, the payment is: = (CoMW x PRCH x BDR x CHE) Where: 'CoMW' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'PRCH' (Percent Reduction in Contract Hours), means the percent reduction in On-Peak Contract Hours requested. 'BDR' has the same meaning as defined above. 'CHE' has the same meaning as defined above.							
1336	On behalf of the former OPA for the DR2 Program - Miscellaneous Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1336 ENDED ON FEBRUARY 28, 2015.</u> Reserved for DR2 payments or charges of a miscellaneous nature not specifically covered under Charge Types 1330 through 1335.	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1340	On behalf of the former OPA for the DR3 Program – Availability Payment Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1340 ENDED ON APRIL 30, 2015.</u> $= HA_H \times MCMW_h \times AAR$ Where: 'HA' (Hours of Availability), means those hours within which a Participant shall maintain a	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Contracted Dispatch Period to be available for potential Curtailment of that Participant's Monthly Contracted MW. 'MCMW' (Monthly Contracted MW), means the MW of demand reduction capacity for a specific Contract Month as identified in one or more DR3 Contact Schedule(s). 'AAR' (Adjusted Availability Rate), means an amount equal to the Availability Rate, expressed in $/MWh, as increased by the Availability Premium or as decreased by the Availability Discount, as the case may be. 'H' is the total hours a Participant is available in a Contract Month.							
1341	On behalf of the former OPA for the DR3 Program – Availability Over-Delivery Settlement Amt	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1341 ENDED ON APRIL 30, 2015.**</u> $= \sum_H (CMW_h - MCMW_h) \times AODR_h$ Applicable only in response to an	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				open standby notification. Where: 'CMW' (Confirmed MW), means the number of MW available for Curtailment by the Participant. 'CMW' is limited to the lesser of the Monthly Contracted MW plus 15 MW and 130% of the Monthly Contracted MW. 'MCMW' has the same meaning as in CT1340. 'AODR' (Availability Over-Delivery Rate), means the over-delivery rate as specified by the *OPA*. 'H' is the set of all hours 'h' in the Contract month where the 'CMW' exceeded the 'MCMW'.							
1342	On behalf of the former OPA for the DR3 Program – Availability Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1342 ENDED ON APRIL 30, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C:** **A: Availability Set-Off (Reliability)**	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_H PSO_h \times AAR \times MCMW_h$ This formula applies when the Reliability Rate for a given Settlement Point is less than 85% during any meter interval of an Activation Hour, or where the Participant is not Fully Available for Curtailment as defined in the *OPA* DR3 Program Rules. Where: For each metered interval, the Reliability Rate at a settlement point is defined as the actual reduction divided by the requested reduction; however the Reliability Rate cannot exceed 100%. 'PSO' (Performance Set-Off Factor) refers to a set of factors defined in the *OPA* DR3 Program Rules. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'H' is the set of all activation hours 'h' for the activation period. **B: Availability Set-Off (Timely Confirmation)** = PSO x AAR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO* pursuant to the DR3 Program Rules. Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. 'AAR' has the same meaning as in CT1340.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'MCMW' has the same meaning as in CT1340. **C: Availability Set-Off (Low Confirmation)** $= \sum_H (PSO \times AAR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the Contracted Dispatch Period. Where: 'PSO' has the same meaning as defined above. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'CMW' has the same meaning as in CT1341. 'H' is the set of all confirmed hours 'h' when the Confirmed							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period.							
1343	On behalf of the former OPA for the DR3 Program – Utilization Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1343 ENDED ON APRIL 30, 2015.**</u> $= [\sum_H (Curt_h \times UR_h)] - [\sum_H (NG_h \times MIN(HOEP, UR_h))]$ Where: 'Curt' (Curtailment), means the number of MWh Curtailed by a Participant when requested by the *IESO*, as measured through the use of electricity meter(s). Curtailment shall not exceed the product of the Activation MW and the activation period requested by the *IESO*, plus the lesser of an additional 15% of the Activation MW per hour of the activation period, OR 15 MWh per hour of the activation period. 'UR' (Utilization Rate), means the rates, expressed in $/MWh, as	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				specified by the *OPA*. 'NG' (Net Generation), means the MWh of net electricity generated by any contributor that is a behind the meter generator. 'H' is the total hours 'h' a Participant is activated in a Contract Month.							
1344	On behalf of the former OPA for the DR3 Program – Utilization Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1344 ENDED ON APRIL 30, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C:** **A: Utilization Set-Off (Reliability)** $= \sum_H PSO_h \times UR \times MCMW_h$ This formula applies when the Reliability Rate for a given Settlement Point is less than 85% during any meter interval of an Activation Hour. Where: For each metered interval, the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Reliability Rate at a settlement point is defined as the actual reduction divided by the requested reduction; however the Reliability Rate cannot exceed 100%. 'PSO' (Performance Set-Off Factor) refers to a set of factors defined in the *OPA's* Program Rules. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340. 'H' is the set of all activation hours 'h' for the activation period. **B: Utilization Set-Off (Timely Confirmation)** = PSO x UR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO* pursuant to the DR3 Program Rules.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340 **C: Utilization Set-Off (Low Confirmation)** $= \sum_H (PSO \times UR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Contracted Dispatch Period. Where: 'PSO' has the same meaning as defined above. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340. 'CMW' has the same meaning as in CT1341. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period.							
1345	On behalf of the former OPA for the DR3 Program – Planned Non-Performance Event Set-Off Amt	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1345 ENDED ON APRIL 30, 2015.**</u> The Planned Non-Performance Availability Set-Off applies for any day for which a participant has requested a Non-Performance Event as part of either a Single Day Non-Performance Event or a	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				part of an Extended Period Planned Non-Performance Event. The monthly set-off calculation is the sum of all: 1. Non-Activation Day Non-Performance Availability Set-Off s and 2. Activation Day Non-Performance Availability Set-Offs. For 1.) The Non-Activation Day Non-Performance Availability Set-Off amount is: $= (AAR \times MCMW_h \times HANE_H)$ Where: 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'HANE' (Hours of Availability for a Non-Performance Event), represents the Hours of Availability for all days in the contract month for which a planned Non-Performance Event is							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				requested and for which an Activation Notice is not received by the participant. For 2.) The Activation Day Non-Performance Availability Set-Off amount is: = (OH x AAR x $MCMW_h$ x $NEWF_H$) Where: 'OH' (Opportunity Hours), means 64 if Option A is applicable to the Settlement Account; or 32 if Option B is applicable to the Settlement Account. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'NEWF' (Non-Performance Event Weighting Factor), means 50%, if the Actual Activated MWh per interval, as averaged over all of the Intervals in the Contracted Dispatch Period for the Activation, is greater than or equal to the							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				product of the Monthly Contracted MW and 1/12 of an hour; or 100% otherwise.							
1346	On behalf of the former OPA for the DR3 Program – Meter Data Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1346 ENDED ON APRIL 30, 2015.**</u> = MDSF x (HA_H x $MCMW_h$ x AAR) This formula applies when the complete set of weekly meter data and proof of any Forced Outage(s) for a Settlement Account is not received by 15:00 EST on the first Business Day of the following week. The formula recovers a percentage of the availability payment for the applicable week. Where: 'MDSF' (Meter Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: - 20% for the first week that the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered; - 33% for the second week that the full data remains undelivered; - 50% for the third week that the full data remains undelivered ; and - 100% for the fourth week that the full data remains undelivered. 'HA' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'AAR' has the same meaning as in CT1340. 'H' is the total hours a Participant is available for the applicable week.							
1347	On behalf of the former OPA for the DR3 Program – Buy-Down Settlement	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1347 ENDED ON APRIL 30, 2015.**</u> Buy-Down means the act by the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			Participant of reducing its Monthly Contracted MW and/or removing Daily Schedules from participation in DR3. For the Buy-Down of Monthly Contracted MW the payment is: = (MCMWR x BDR x HAE) Where: 'MCMWR' (Monthly Contracted MW Reduction), means the MW of demand reduction in the Monthly Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'HAE' (Hours of Availability Elapsed), means the number of Hours of Availability that have elapsed in the Schedule Term up to the date that the reduction takes effect. For the Buy-Down of the Daily Schedules the payment is:							invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				= (MCMW x RD x BDR x HAE) Where: 'MCMW' has the same meaning as in CT1340. 'RD' (Requested Days), means the number of Business Days per week from which the Hours of Availability are to be removed. 'BDR' has the same meaning as defined above. 'HAE' has the same meaning as defined above.							
1348	On behalf of the former OPA for the DR3 Program – Miscellaneous Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1348 ENDED ON APRIL 30, 2015.**</u> Reserved for DR3 payments or charges of a miscellaneous nature not specifically covered under Charge Types 1340 through 1347.	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1350	Capacity Based Recovery Amount for Class A Loads	N/A	N/A	$\Sigma_{H,M,C}TD * PDF_{k,m,d}$ Where: 'd' is the ratio of the number of days in the month the Peak Demand Factor was effective compared to the total number of days in the month. 'C' is the set of the following *charge types* 'c': 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307,1308, 1309, 1310, 1311, 1312, 1313 and 1314 to 1319.	Monthly	Due IESO	13	N/A	N/A	N/A	See comments under charge type 147
1351	Capacity Based Recovery Amount for Class B Loads	N/A	N/A	For Fort Frances Power Corporation Distribution Inc.: $(\Sigma_{H,M,C}TD - TD_{1350}) \times (\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k} - EEQ)$ / Class B Load For other Class B *Market Participants* and Distributors: $(\Sigma_{H,M,C}TD - TD_{1350}) \times (\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k} - GA - AQEW_{g,k,h,M}^{m,t} - PGS_{h,M})$ / Class B Load Where: Class B Load = $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t}$	Monthly	Due IESO	13	N/A	N/A	N/A	See comments under charge type 148

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				+ Σ_K EGEI$_k$ - Σ_K EEQ - Σ_K GA– AQEW$_{g,k,h,M}^{m,t}$ - Σ_K PGS$_{h,M}$) 'H' is the set of all *settlement hours* 'h' in the month. 'K' is the set of all *market participants* 'k'. 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. 'C' is the set of the following *charge types* 'c': 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307 and 1308, 1309, 1310, 1311, 1312 and 1313 and 1314 to 1319.							
1380	Demand Response 2 Availability Payment Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1380 ENDED ON FEBRUARY 28, 2015.**</u> Σ_KTD$_{k,1330}$ Where 'K' is the set of all DR2 participants 'k'. Where TD$_{k,1330}$ is the *settlement amount* of *charge type* 1330 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1381	Demand Response 2 Availability	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1381 ENDED**	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Set-Off Balancing Amount			**ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1331}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1331}$ is the *settlement amount* of *charge type* 1331 for the month for DR2 participant 'k'.							program was last settled on the February 2015 settlement statements and invoice.
1382	Demand Response 2 Utilization Payment Balancing Amount	N/A	N/A	****CALCULATIONS FOR *CHARGE TYPE* 1382 ENDED ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1332}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1332}$ is the *settlement amount* of *charge type* 1332 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1383	Demand Response 2 Utilization Set-Off Balancing Amount	N/A	N/A	****CALCULATIONS FOR *CHARGE TYPE* 1383 ENDED ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1333}$	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1333}$ is the *settlement amount* of *charge type* 1333 for the month for DR2 participant 'k'.							
1384	Demand Response 2 Meter Data Set-Off Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1384 ENDED ON FEBRUARY 28, 2015.</u> $\Sigma_K TD_{k,1334}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1334}$ is the *settlement amount* of *charge type* 1334 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1385	Demand Response 2 Buy-Down Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1385 ENDED ON FEBRUARY 28, 2015.</u> $\Sigma_K TD_{k,1335}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1335}$ is the *settlement amount* of *charge type* 1335 for	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the month for DR2 participant 'k'.							
1386	Demand Response 2 Miscellaneous Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1386 ENDED ON FEBRUARY 28, 2015.**</u> $\Sigma_K TD_{k,1336}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1336}$ is the *settlement amount* of *charge type* 1336 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1390	Demand Response 3 Availability Payment Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1390 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1340}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1340}$ is the *settlement amount* of *charge type* 1340 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1391	Demand Response 3 Availability Over-Delivery Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1391 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1341}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1341}$ is the *settlement amount* of *charge type* 1341 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1392	Demand Response 3 Availability Set-Off Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1392 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1342}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1342}$ is the *settlement amount* of *charge type* 1342 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1393	Demand Response 3 Utilization Payment	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1393 ENDED ON APRIL 30, 2015.</u>	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR3 Contract. The DR3 program was last settled

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Balancing Amount			$\Sigma_K TD_{k,1343}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1343}$ is the *settlement amount* of *charge type* 1343 for the month for DR3 participant 'k'.							on the April 2015 settlement statements and invoice.
1394	Demand Response 3 Utilization Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1394 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1344}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1344}$ is the *settlement amount* of *charge type* 1344 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1395	Demand Response 3 Planned Non-Event Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1395 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1345}$	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1345}$ is the *settlement amount* of *charge type* 1345 for the month for DR3 participant 'k'.							
1396	Demand Response 3 Meter Data Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1396 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1346}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1346}$ is the *settlement amount* of *charge type* 1346 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1397	Demand Response 3 Buy-Down Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1397 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1347}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1347}$ is the *settlement amount* of *charge type* 1347 for	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the month for DR3 participant 'k'.							
1398	Demand Response 3 Miscellaneous Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1398 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1348}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1348}$ is the *settlement amount* of *charge type* 1348 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1400	OPA Contract Adjustment Settlement Amount	N/A	N/A	Manual entry based on the values submitted by the former *OPA* via On-line settlement form "Global Adjustment Amount Information", subject to Regulation.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Implementation details subject to government regulation
1401	Incremental Loss Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due *MP*	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1402	Hourly Condense System Constraints Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1403	Speed-no-load Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1404	Condense Unit Start-up and OM&A Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1405	Hourly Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1406	Monthly Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1407	Condense Transmission Tariff Reimbursement Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1408	Condense Availability Cost Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1409	Monthly Condense System Constraints Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1410	Renewable Energy Standard Offer Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement forms: "Licenced Distributor Claims for the Renewable Energy Standard Offer Program" and "Embedded Distributor Claims for the Renewable Energy Standard Offer Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1411	Clean Energy Standard Offer Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via future On-line settlement form "Clean Energy Standard Offer Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1412	Feed-In Tariff Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement form "Feed-In Tariff Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1413	Renewable Generation Connection – Monthly Compensation Settlement Credit	N/A	N/A	Manual entry based on the values submitted by the OEB.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	Recipients, compensation amounts and other implementation details subject to OEB regulation.
1414	Hydroelectric Contract Initiative Settlement	N/A	N/A	Manual entry based on the values submitted by the *market participant*.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount										
1415	Conservation Assessment Recovery	N/A	N/A	$\Sigma_{H,M,}$ TD x ($\Sigma_{H}^{M,T}$ $AQEW_{k,h}^{m,t}$ / ($\Sigma_{K,H}^{M,T}$ $AQEW_{k,h}^{m,t}$) Where 'H' is the set of all *settlement hours* 'h' in the year 2009. Where 'K' is the set of all non-LDC load *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'TD' equals the value assessed by the *OEB*.	Monthly	Due Non-LDC Load	13	N/A	N/A	N/A	Implementation details subject to government regulation.
1416	Conservation and Demand Management – Compensation Settlement Credit	N/A	N/A	Manual entry based on the values submitted by the OEB and/or as stipulated by contracts held with the IESO.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1417	Daily Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1418	Biomass Non-Utility Generation	N/A	N/A	Manual entry based on the values submitted by *market participants*	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Contracts Settlement Amount			via IESO portal.							
1419	Energy from Waste (EFW) Contracts Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via IESO portal.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1420	Ontario Electricity Support Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via *IESO* portal	Monthly	Due LDCs, USMPs and service providers	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 314/15
1421	Capacity Agreement Settlement Credit	N/A	N/A	Calculated as per capacity contracts.	Monthly	Either way	13	13	N/A	13	
1422	Capacity Agreement Penalty Settlement Amount	N/A	N/A	Calculated as per capacity contracts.	Monthly	Either way	13	13	N/A	13	
1423	Energy Sales Agreement Settlement Credit	N/A	N/A	Calculated as per energy sales contracts.	Monthly	Either way	13	13	N/A	13	
1424	Energy Sales Agreement Penalty Settlement Amount	N/A	N/A	Calculated as per energy sales contracts.	Monthly	Either way	13	13	N/A	13	
1450	OPA Contract Adjustment Balancing	N/A	N/A	TD_{1400}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount										regulation
1451	Incremental Loss Offset Settlement Amount	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due *IESO*	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1460	Renewable Energy Standard Offer Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1410}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1410}$ is the total *settlement amount* of *charge type* 1410 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1461	Clean Energy Standard Offer Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1411}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1411}$ is the total *settlement amount* of *charge type* 1411 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1462	Feed-In Tariff Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1412}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1412}$ is the total *settlement amount* of *charge*	Monthly	Due *IESO*	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				type 1412 for the month for *market participant* 'k'.							
1463	Renewable Generation Connection – Monthly Compensation Settlement Debit	N/A	N/A	$\Sigma_K TD_{k,1413}$ x $(\Sigma_H{}^{M,T} AQEW_{k,h}{}^{m,t} + EGEI_k) /$ $(\Sigma_{K,H}{}^{M,T} AQEW_{k,h}{}^{m,t} + \Sigma_K EGEI_k)$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where $TD_{k,1413}$ is the total *settlement amount* of *charge type* 1413 for the month for *market participant* 'k'.	Monthly	Due MPs	13	N/A	N/A	N/A	Cost recovery implementation details set out in Ontario Regulation 330/09
1464	Hydroelectric Contract Initiative Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1414}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1414}$ is the total *settlement amount* of *charge type* 1414 for the month for *market*	Monthly	Due IESO	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participant 'k'.							
1465	Ontario Clean Energy Benefit (-10%) Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,9992}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,9992}$ is the *settlement amount* of *charge type* 9992 for the month for *market participant* 'k'.	Monthly	Due Ministry of Energy	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 495/10.
1466	Conservation and Demand Management – Compensation Balancing Amount	N/A		$\Sigma_K TD_{k,1416}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1416}$ is the *settlement amount* of *charge type* 1416 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1467	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount	**N/A**	**N/A**	$\Sigma_K TD_{k,9982}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,9982}$ is the *settlement amount* of *charge type* 9982 for the month for *market participant*	Monthly	Due Ministry of Energy	**0**	**N/A**	**N/A**	**N/A**	Implementation details subject to Ontario Regulation 363/16

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'k'.							
1468	Biomass Non-Utility Generation Contracts Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1418}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1418}$ is the total *settlement amount* of *charge type* 1418 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1469	Energy from Waste (EFW) Contracts Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1419}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1419}$ is the total *settlement amount* of *charge type* 1419 for the month for *market participant* 'k'	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1470	Ontario Electricity Support Program Balancing Amount	N/A	N/A	$\Sigma_H{}^{M,T}(AQEW_{k,h}{}^{m,t} + EGEI_k) \times TP$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due IESO	13	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 314/15. TP rate subject to OEB regulation.
1471	Capacity Agreement Balancing	N/A	N/A	$\Sigma_K TD_{k,1421}$ Where 'K' is the set of all *market*	Monthly	Either way	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			*participants* 'k'. Where $TD_{k,1421}$ is the total *settlement amount* of *charge type* 1421 for the month for *market participant* 'k'							
1472	Capacity Agreement Penalty Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1422}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1422}$ is the total *settlement amount* of *charge type* 1422 for the month for *market participant* 'k'	Monthly	Either way	0	N/A	N/A	N/A	
1473	Energy Sales Agreement Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1423}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1423}$ is the total *settlement amount* of *charge type* 1423 for the month for *market participant* 'k'	Monthly	Either way	0	N/A	N/A	N/A	
1474	Energy Sales Agreement Penalty Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1424}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1424}$ is the total *settlement amount* of *charge type* 1424 for the month for *market*	Monthly	Either way	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participant 'k'							
1500	Day-Ahead Production Cost Guarantee Payment – Component 1 and Component 1 Clawback	DA_PCG_ COMP1	9.4.7D.4	$\sum^{T}$ (Component 1 – Component1 Clawback) **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DA_DQSI_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), DA_BE) + $DA_SNLC_{k,h}^{m}$/12 **Component 1 Clawback:** -1 x OP($EMP_h^{m,t}$, MIN($MLP_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), DA_BE) + $DA_SNLC_{k,h}^{m}$/12 Where: T is the set of metering intervals in the settlement hour h. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2.	Hourly	Either Way	13	N/A	N/A	N/A	**Component 1** applies to Variants 1, 2 and 3. **Component 1 Clawback** applies to Variant 2 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For a combustion turbine resource associated to a pseudo unit: **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DA_DQSI_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * (1 – $PST_{k,h}^{p,t}$) **Component 1 Clawback:** -1 x OP($EMP_h^{m,t}$, MIN($MLP_CONS_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * (1 – $PST_{k,h}^{p,t}$) For a steam turbine resource associated to a pseudo unit: **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DIGQ_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * $PST_{k,h}^{p,t}$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Component 1 Clawback: -1 x $OP(EMP_h^{m,t}$, $MIN(MLP_CONS_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t})$, $DIPC_{k,h}^{m,t})$ + $(DA_SNLC_{k,h}^{m}/12)$ * $PST_{k,h}^{p,t}$							
1501	Day-Ahead Production Cost Guarantee Payment – Component 2	DA_PCG_COMP2	9.4.7D.4	$\sum^{T} (XDA_BE_{k,h}^{m,t} - MAX(0, XBE_{k,h}^{m,t}))$ Where: T is the set of metering intervals in the settlement hour h. $XDA_BE_{k,h}^{m,t}$ = (-1) * [$OP(EMP_h^{m,t}$,$min(DA_DQSI_{k,h}^{m,t}$, $OPCAP_{k,h}^{m,t})$, DA_BE) – $OP(EMP_h^{m,t}$, $min(DA_DQSI_{k,h}^{m,t}$, $OPCAP_{k,h}^{m,t}$, $max(DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}))$, DA_BE)] $XBE_{k,h}^{m,t}$ = (-1) * [$OP(EMP_h^{m,t}$,$min(DA_DQSI_{k,h}^{m,t}$, $OPCAP_{k,h}^{m,t})$, BE) – $OP(EMP_h^{m,t}$, $min(DA_DQSI_{k,h}^{m,t}$, $OPCAP_{k,h}^{m,t}$, $max(DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}))$, BE)] Where:	Hourly	Either Way	13	N/A	N/A	N/A	**Component 2** applies to Variants 1, 2 and 3. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. $EMP_h^{m,t} = 0$. For a combustion turbine and a steam turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$;. For a steam turbine resource associated to a pseudo unit: $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$							
1502	Day-Ahead Production Cost Guarantee Payment – Component 3 and Component 3 Clawback	DA_PCG_COMP3	9.4.7D.4	$\sum^{T}$ (-1)*(Component 3 + Component 3 Clawback) Where: T is the set of metering intervals in the settlement hour h.	Hourly	Either Way	13	N/A	N/A	N/A	**Component 3** applies to Variants 1, 2 and 3. **Component 3 Clawback** applies to Variant

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For Component 3, the six scenarios of the possible orderings of the generator's DA_DQSI, DQSI and MQSI are as follows: 1. DQSI >= MQSI >= DA_DQSI 2. MQSI >= DQSI >= DA_DQSI 3. DQSI > DA_DQSI > MQSI 4. MQSI > DA_DQSI > DQSI 5. DA_DQSI >= DQSI > MQSI 6. DA_DQSI >= MQSI > DQSI **Component 3:** Component 3 is calculated when: the CMSC for energy ($TD_{k,h,105}^{m,t}$) for the same metering interval is a value other than zero; and the mathematical sign of (DQSI-MQSI) is equal to the mathematical sign of (AQEI-MQSI).							2 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Scenario 1 and 2: 0 Scenario 3: $OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DA_DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Scenario 4: $OP(EMP_h^{m,t}, DA_DQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Scenario 5 and 6: $TD_{k,h,105}^{m,t}$ Refer to Market Rules for a description of Scenarios 1 through 6.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Component 3 Clawback: Component 3 Clawback is calculated when: the event is a constrained-on event (i.e. Scenarios 3 and 5); the *minimum loading point* is greater than the real-time unconstrained schedule; and Component 3 ($PCG_COMP3_{k,h}^{m,t}$) for the same interval is a value other than zero. $MAX(OP(EMP_h^{m,t}, MLP_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE)) – OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE)$ For combustion turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$; and MLP is replaced with MLP_CONS.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For steam turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$, MLP is replaced with MLP_CONS, and $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$. Where 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2.							
1503	Day-Ahead Production Cost Guarantee Payment – Component 4	DA_PCG_COMP4	9.4.7D.4	$\sum^{T}$ ((-1) x [OP($PROR_{r1,h}^{m,t}$, $30R_SQROR_{r1,k,h}^{m,t}$, $BR_{r1,k,h}^{m,t}$) + OP($PROR_{r2,h}^{m,t}$, $10NS_SQROR_{r2,k,h}^{m,t}$, $BR_{r2,k,h}^{m,t}$) + OP($PROR_{r3,h}^{m,t}$, $10S_SQROR_{r3,K,h}^{m,t}$, $BR_{r3,k,h}^{m,t}$)]) Where	Hourly	Either Way	13	N/A	N/A	N/A	**Component 4** applies to Variants 1, 2 and 3. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				T is the set of metering intervals in the settlement hour h. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. r1 = 30-minute operating reserve r2 = 10-minute non-spinning operating reserve r3 = 10-minute spinning operating reserve $30R_SQROR_{r1,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t}, SQROR_{r1,k,h}^{m,t})]$ $10NS_SQROR_{r2,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t} - 30R_SQROR_{r1,k,h}^{m,t}, SQROR_{r2,k,h}^{m,t})]$ $10S_SQROR_{r3,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t} - 30R_SQROR_{r1,k,h}^{m,t} - 10NS_SQROR_{r2,k,h}^{m,t}, SQROR_{r3,k,h}^{m,t})]$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For combustion turbine resources and steam turbine resources associated to a pseudo unit: $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$							
1504	Day-Ahead Production Cost Guarantee Payment – Component 5	DA_PCG_COMP5	9.4.7D.4	If first hour of the DACP start event is not HE24, then the start-up cost is calculated as follows: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{m}$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{m} - (DA_SUC_{k,h}^{m} \times 1/12 \times SUC_INT)$ Where SUC_INT is the number of 5-minute intervals between and including Interval 7 and 18 the *market participant* takes to achieve	Hourly	Due *IESO*	13	N/A	N/A	N/A	**Component 5** applies to Variant 1 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				MLP Scenario 3 (achieves MLP after the start of the 18th interval): 0 For a combustion turbine resource associated to a pseudo unit: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{p} * (1 - PST_{k,h}^{p,t})$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{p} * MLP_MF * (1 - PST_{k,h}^{p,t})$ Scenario 3 (achieves MLP after the start of the 18th interval): 0 Where $MLP_MF = 1/12 * (12 - SUC_INT)$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For a steam turbine resource associated to a pseudo unit: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{p} * (PST_{k,h}^{p,t})$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{p} * MLP_MF * (PST_{k,h}^{p,t})$ Scenario 3 (achieves MLP after the start of the 18th interval): 0. If first hour of the DACP start event is HE24 and the resource has not achieved MLP before Interval 12, then the start-up cost is calculated as follows:							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$DA_SUC_{k,h}^{m} * 50\%$ For a combustion turbine resource associated to a pseudo unit: $DA_SUC_{k,h}^{m} * (1 - PST_{k,h}^{p,t}) * 50\%$ For a steam turbine resource associated to a pseudo unit: $DA_SUC_{k,h}^{m} * (PST_{k,h}^{p,t}) * 50\%$							
1505	Day-Ahead Production Cost Guarantee Reversal		9.4.7D.6	For each DACP start event If $\sum_{H,C} TD_{k,h,c} < 0$ Then $\sum_{H,C} TD_{k,h,c}$ Else 0 Where:	Hourly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'C' is the set of the following charge types 'c' as follows: **1500, 1501, 1502, 1503, 1504** 'H' is the set of all *settlement hours* 'h' in the DACP start event.							
1510	Day-Ahead Generator Withdrawal Charge	DA_GWC	9.3.8F.2	The Day-Ahead Generator Withdrawal Charge is calculated as follows: If notification of the withdrawal is received 4 or more hours prior to first withdrawal hour: $MIN(0,\sum_{i=1}^{n}(-1) * OP([MIN(PD_EMP_h^{m,t}, EMP_h^{m,t}), MLP_{k,h}^{m,t}, DA_BE_{k,h}^{m,t}))$ Where: n is the set of all *metering intervals* 't' in *settlement hour* 'h' for the total number of hours with a committed day-ahead schedule for the DACP start event that are withdrawn If notification of the withdrawal is	Daily	Due *IESO*	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				received less than 4 hours prior to first withdrawal hour: $MIN(0,\sum_{i=1}^{n}(-1) * OP(EMP_h^{m,t}, MLP_{k,h}^{m,t}, DA_BE_{k,h}^{m,t})$ Where: n is the set of all *metering intervals* 't' in *settlement hour* 'h' for the total number of hours with a committed day-ahead schedule for the DACP start event that are withdrawn For resources associated to a pseudo unit, the DA_BE is replaced with $DIPC_{k,h}^{m,t}$; and the MLP is replaced with MLP_CONS.							
1550	Day-Ahead Production Cost Guarantee Recovery Debit		9.4.8.1.12	$\sum_{H,c}^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following charge types 'c' as follows: **1500, 1501, 1502, 1503, 1504,**	Daily	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				1505 'K' is the set of all market participants 'k'. 'M' is the set of all delivery points 'm' and intertie metering points 'i'. 'H' is the set of all *settlement hours* 'h' in the day. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.							
1560	Day-Ahead Generator Withdrawal Rebate		9.4.8.2.14	$\sum_{H,c}{}^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}{}^{m,t} + SQEW_{k,h}{}^{i,t}) / \sum_{K}{}^{M,T} (AQEW_{k,h}{}^{m,t} + SQEW_{k,h}{}^{i,t})]$ Where: 'c' is *charge type* 1510. 'K' is the set of all market participants 'k'. 'M' is the set of all delivery points 'm' and intertie metering points 'i'. 'H' is the set of all *settlement hours* 'h' in the day. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.	Daily	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1600	Forecasting Service Settlement Amount	N/A	9.1.1.2.16, 9.4.7G , 9.4.7G.1, 9.4.8.1.16, 9.6.3.17, 9.6.11.5	Manual entry based on the values submitted by the forecasting entity.	Monthly	Due MP	13	N/A	N/A	N/A	
1650	Forecasting Service Balancing Amount	N/A	9.1.1.2.16, 9.4.7G , 9.4.7G.1, 9.4.8.1.16, 9.6.3.17, 9.6.11.5	$= \sum_{H,C}^{M,T} TD_{h,c}$ x $[(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is charge type 'c' **1600.** Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
9920	Adjustment Account Credit	AAC	9.6.18.6	AAD x $\sum_{H}^{M,T} [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all s*ettlement hours* 'h' in the *billing periods* immediately preceding the current *billing period*, as determined by *IESO Board.* Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'. Where 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i' Where 'K' is the set of all *market participants* 'k'	Monthly (when applicable)	Due MP	13	N/A	0	13	The *billing period* is defined in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.30

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
9980	Smart Metering Charge	N/A	N/A	Manual entry based on the values submitted by the *Smart Metering Entity*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to Ontario Regulation 453/06 and the applicable OEB rate order.
9982	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount	**N/A**	**N/A**	Manual entry based on: (1) the values submitted via on-line settlement forms "Ontario Rebate for Electricity Consumers (OREC) – LDC" and "Ontario Rebate for Electricity Consumers (OREC) – Unit Sub-Meter Provider"; and (2) 8 per cent of the base invoice amount for *market participant consumers* who have an eligible account with the *IESO*	Monthly	Due LDCs, Unit Sub-Meter Providers and eligible MPs	**0**	**N/A**	**N/A**	**N/A**	Implementation details subject to Ontario Regulation 363/16
9990	IESO Administration Charge	N/A	9.4.5.1	$\sum_{H}^{M,T}(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + EGEI_{k}) \times TP$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering*	Monthly	Due *IESO*	13	N/A	0	13	TP rate subject to OEB regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' in the set of all *settlement hours* 'H'.							
9992	Ontario Clean Energy Benefit (-10%) Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via on-line settlement forms "Ontario Clean Energy Benefit (-10%) – LDC" and "Ontario Clean Energy Benefit (-10%) – Unit Sub-Meter Provider".	Monthly	Due LDCs and Unit Sub-Meter Providers Either way	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 495/10.
9996	Recovery of Costs	N/A	Ch. 2, Appendix 3.4	Manual entry as per Chapter 2, Appendix 3.4	Monthly	Due *IESO*	13*	N/A	N/A	N/A	*Refer to the HST Guide (IMO_GDE_0002) for the application of tax rates to other jurisdictions

2.3 Rounding Conventions – by Settlement Variable

2.3.1 Key to the Table of Rounding Conventions for Individual Settlement Variables

Column Name	Description
Variable referenced in Section 2.1	This column provides the name of the variable listed in Section 2.1.
Data Description	The short name of the variable in question.
Number of decimal places (values published by upstream systems)	If this variable is available to *market participants* via another system besides *settlements*, this number of significant digits to the right of the decimal place in the published value. **NOTE:** "published" does not necessarily mean a public report or a report available to all *market participants*. E.g. *metering data* from the *metering database*.
Number of significant digits to the right of the decimal (values received by CRS)	This column discloses the accuracy of a settlement variable received by the *IESO* settlements system via an upstream system OR manually entered as the case may be.
Number of significant digits to the right of the decimal (externally passed from CRS in settlement statements or data files)	This column discloses the accuracy of a settlement variable appearing on a *settlement statement*. **NOTE: This should NOT be confused with the number of decimal places allowable in some columns on the *settlement statements* and data files as set out in, "Format Specification for Settlement Statements and Data Files."**
Comments	Any comments as to the availability of such variables. In some cases, variables are not made available to *market participants* via upstream systems and are noted as such. In other instances variables are not published in a report but are communicated in participant-specific messages (e.g. *bid/offer* confirmation).

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
AAD	Adjustment Account Disbursement	N/A	2	3	• Not published in upstream IESO systems
$AQEI_{k,h}^{m,t}$	Allocated Quantity of Energy Injected	2	3	3	• RMS presentation is in units of KW to TWO decimal places. • Unit change to MW to 3 decimal places occurs prior to transfer to CRS.
$AQEW_{k,h}^{m,t}$	Allocated Quantity of Energy Withdrawn	2	3	3	• RMS presentation is in units of KW to TWO decimal places. • Unit change to MW to 3 decimal places occurs prior to transfer to CRS.
$AQOR_{r,k,h}^{m,t}$	Allocated Quantity of Operating Reserve	1	1	1	• See SQROR.
BE	Energy Offers	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
BL	Energy Bids	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* ("*dispatch data*") are received.
BR_r	Operating Reserve Offers	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* ("*dispatch data*") are received.
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought	N/A	1 or 3	1 or 3	• Not published via upstream *IESO* systems. • *Physical Bilateral Contract Data* is provided to the *IESO* by the *selling market participant*. • Accuracy driven by the submission at the MIM interface and the method used (i.e. absolute quantities vs. 100% of *PBC*).

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold	N/A	1 or 3	1 or 3	• Not published via upstream *IESO* systems. • *Physical Bilateral Contract Data* is provided to the *IESO* by the *selling market participant*. • Accuracy driven by the submission at the MIM interface and the method used (i.e. absolute quantities vs. 100% of *PBC*).
CGC	Combined Guaranteed Costs	N/A	2	2	• Not published via upstream *IESO* systems.
$DA_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *schedule of record*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$DA_BE_{k,h}^{m,t}$	*Energy Offer* submitted into the *schedule of record at a delivery point*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DA_BL_{k,h}^{i,t}$	*Energy* Bids submitted into the *schedule of record*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$DA_DQSI_{k,h}^{i,t}$	*Schedule of record* dispatch quantity scheduled for injection at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_DQSI_{k,h}^{m,t}$	*Schedule of record* dispatch quantity scheduled for injection at a *delivery point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_DQSW_{k,h}^{i,t}$	*Schedule of record* dispatch quantity scheduled for withdrawal at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_ELMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	2	2	2	• MIM Publication.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DA_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	2	2	2	• MIM Publication.
$DA_SNLC_{k,h}^{m}$	Speed-no-load costs submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SNLC_{k,h}^{p}$	Speed-no-load costs for pseudo units submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SUC_{k,h}^{m}$	Start-up costs submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SUC_{k,h}^{p}$	Start-up costs for pseudo units submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DIPC_{k,h}^{m,t}$	Derived Interval Price Curve	1	2	1	• Derived price curve and therefore not published on *settlement statements*.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DIGQ_{k,h}^{m,t}$	Derived Interval Guaranteed Quantity	1	1	1	• Derived schedule quantity and therefore not published on *settlement statements*.
$DQSI_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Injection	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DQSR_{r,k,h}^{m,t}$	Dispatch Quantity Schedule of Operating Reserve	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DQSW_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Withdrawal	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
DRACP	Demand Response Auction Clearing Price	2	2	2	• Published in post-auction report.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DRACP_h$	Hourly Demand Response Auction Clearing Price	N/A	2	2	• Not published via upstream *IESO* systems.
$DRBOC_k$	Demand Response Buy-Out Capacity	N/A	3	3	• Not published via upstream *IESO* systems.
$DRCO_k$	Demand Response Capacity Obligation (MW)	1	3	3	• Published in private post-auction report.
$DREBQ_k$	Demand Response Energy Bid Quantity	N/A	1	1	• Not published via upstream *IESO* systems.
DRNPF	Demand Response Non-Performance Factor	N/A	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
DRSQty	Demand Response Scheduled Quantity	N/A	1	1	• Not published via upstream *IESO* systems.
EEQ	Excluded Energy Quantity	N/A	3	3	• Not published via upstream *IESO* systems.
$EGEI_k$	Embedded Generator Energy Injection	N/A	3	3	• Not published via upstream *IESO* systems.
$EIM_{k,h}$	Operating Profit Function for the IMPORT of Energy under the Intertie Offer/Bid Guarantee Settlement Credit	N/A See Section 2.4	N/A See Section 2.4	N/A See Section 2.4	• This acronym is associated with the energy import component of the Intertie Offer/Bid Guarantee Settlement Credit.
$EMP_h^{i,t}$	5-minute Energy Market Price at the Interties	2	2	2	• MIM Publication.
$EMP_h^{m,t}$	5-minute Energy Market Price within Ontario	2	2	2	• MIM Publication.
$EMP_h^{REF,t}$	5-minute Energy Market Reference Price	2	2	2	• MIM Publication.
ETS	Export Transmission Service Tariff Rate	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
FP_h^m	Fixed Energy Rate	N/A	2	2	• Not published via upstream *IESO* systems.
FPC_h^m	Rate for a designated group of *charge types* (see description of *charge type* 141))	N/A	2	2	• Not published via upstream *IESO* systems.
GRP	Generator Regulated Price	N/A	2	2	• Not published via upstream *IESO* systems.
$HOEP_h$	Hourly Ontario Energy Price	2	2	2	• MIM Publication.
$LCD_{k,h}^m$	Line Connection Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
MC_h^m	Minimum Consumption	1	1	1	
MI	Ordered matrix of and corresponding IOG *settlement amounts*	1 and 2	2	2	• Derived set of variables and therefore not published on *settlement statements*.
$MLP_{k,h}^{m,t}$	Minimum Loading Point	1	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$MLP_CONS_{k,h}^{m,t}$	Minimum Loading Point for a steam turbine resource or a combustion turbine resource associated to a pseudo unit	1	1	1	• Not published via upstream *IESO* systems.
$MQSI_{k,h}^{m,t}$	Market Quantity Scheduled for Injection	1	1	1	
$MQSI\{adj\}_{k,h}^{m,t}$	Adjusted Market Quantity Scheduled for Injection	1	1	1	• Derived variable and therefore not published on *settlement statements.*
$MQSW_{k,h}^{m,t}$	Market Quantity Scheduled for Withdrawal	1	1	1	
$NSD_{k,h}^{m}$	Network Service Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
OP	Operating Profit Function	N/A See Section 2.4	N/A See Section 2.4	N/A See Section 2.4	• This acronym is associated with the operating profit equation used within the CMSC equation.
$OPCAP_{k,h}^{m,t}$	Operating Capacity	1	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$PB_IM_h^t$	Price bias adjustment factor for import transactions	2	2	2	• Published on by the *IESO* on a periodic basis.
$PB_EX_h^t$	Price bias adjustment factor for export transactions	2	2	2	• Published on by the *IESO* on a periodic basis.
$PD_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *Pre-dispatch*	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$PD_BL_{k,h}^{i,t}$	*Energy bids* submitted into the *Pre-dispatch*	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$PD_DQSI_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for injection at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$PD_DQSW_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for withdrawal at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$PD_ELMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	2	2	2	• MIM Publication.
$PD_EMP_h^{m,t}$	Pre-dispatch energy market price for Ontario	2	2	2	• MIM Publication.
$PD_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	2	2	2	• MIM Publication.
$PROR_{r,h}^{m,t}$	5-minute Operating Reserve Price	2	2	5	• MIM Publication.
$PST_{k,h}^{p,t}$	Steam Turbine Portion from Daily Generator Data	1	1	1	• Not published via upstream *IESO* systems.
PTS-L	Provincial Transmission Service Line Connection Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".
PTS-N	Provincial Transmission Service Network Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
PTS-T	Provincial Transmission Service Transformation Connection Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".
$QTR_{k,h}^{i,j}$	Quantity of Transmission Rights Owned	PENDING	0	0	• TR's are in denominations to the nearest MW. • Upstream publication accuracy currently being resolved.
$SQEI_{k,h}^{i,t}$	Scheduled Quantity of Energy Injected at an *intertie metering point*	1	1	1	
$SQEW_{k,h}^{i,t}$	Scheduled Quantity of Energy Withdrawn at an *intertie metering point*	1	1	1	
$SQROR_{r,k,h}^{m,t}$	Scheduled Quantity of class r *Operating Reserve*	1	1	1	

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$TCD_{k,h}^{m}$	Transformation Connection Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
$TD_{k,h,c}$	Total Market Settlement Amount	N/A	N/A	N/A	• N/A- notational description of an aggregated financial amount (reported to the nearest cent when applicable).
TP_c	Tariff price	N/A	N/A	N/A	• N/A – notational description of tariff rate (reported to the nearest cent when applicable).
TRMP	TR Market Clearing Price	2	2	2	
TRCAD	TR Clearing Account Disbursements	N/A	2	2	• Not published via upstream *IESO* systems.

2.4 Rounding Conventions – by Charge Type

2.4.1 General Notes

- **The table below references significant digits to the right of the decimal place. This should NOT be confused with the number of decimal places allowable in some columns on the *settlement statements* and data files as set out in, "Format Specification for Settlement Statements and Data Files."**

- All **settlement amounts** reported by the *IESO* settlements system are rounded to the nearest cent (i.e. to two decimal places) on *settlement statements,* although some settlement calculations may only yield 1 significant digit to the right of the decimal place. In these instances, the financial amount is NOT further rounded to the nearest ten cents. **The table below does not include the final rounding step to the nearest cent, as this is done for ALL *settlement amounts*. Rather, it describes any intermediate calculations (particularly, those involving division) that involve rounding prior to the final calculation of the *settlement amount*.**

2.4.2 Key to the Table of Rounding Conventions

Column Name	Description
Charge Type Number	This table contains an entry for each *charge type* listed in Section 2.2 of this document ("IESO Charge Types and Equations").
Charge Type Name	The name of each of the *charge types*.
INPUT VARIABLES **Least number of significant digits to the right of the decimal**	In terms of assessing the accuracy of the final *settlement amount*, this column is derived from the settlement variable received by the *settlement* system with the LEAST number of significant digits to the right of the decimal place.
INPUT VARIABLES **Maximum number of significant digits to the right of the decimal**	In terms of assessing the accuracy of the final *settlement amount*, this column is derived from the settlement variable received by the *settlement* system with the MAXIMUM number of significant digits to the right of the decimal place.

Column Name	Description
INTERMEDIATE Rounding done by Settlements	This column indicates whether or not any **INTERMEDIATE** rounding is done by the *IESO settlement process*. **This does NOT include the final rounding of *settlement amounts* to 2 decimal places as the last step in the calculation of ALL *charge types*.**
INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	This column ONLY describes an intermediate calculation of the *settlement amount* in which rounding occurs PRIOR to the final rounding of the *settlement amount* to the nearest cent.
Disposition of INTERMEDIATE CALCULATION 1	This column describes the disposition of the rounded value resulting from Intermediate Calculation 1.
INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	This column ONLY describes an intermediate calculation of the *settlement amount* in which rounding occurs PRIOR to the final rounding of the *settlement amount* to the nearest cent.
Disposition of INTERMEDIATE CALCULATION 2	This column describes the disposition of the rounded value resulting from Intermediate Calculation 2.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
52	Transmission Rights Auction Settlement Debit	0	2	No				
100	Net Energy Market Settlement for Generators and Dispatchable Load	1	3	Yes	Numerator: BCQ Denominator: 12 Resulting Decimals: 3	BCQ quantities Multiplied by EMP when applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
101	Net Energy Market Settlement for Non-dispatchable Load	1	3	Yes	Numerator: BCQ Denominator: 12 Resulting Decimals: 3	BCQ quantities Multiplied by EMP when applicable.		
102	TR Clearing Account Credit	1	3	No				
103	Transmission Charge Reduction Fund	2	3	Yes	Numerator: Difference between SQEW – SQEI by *intertie zone* Denominator: 12 Resulting Decimals: 3	Resulting value included with the TCRF calculation at that particular zone for the *metering interval* in question.		
104	Transmission Rights Settlement Credit	0	2	Yes	Numerator: Summation of the zonal price difference $(EMP_h^{j,t} – EMP_h^{i,t})$ Denominator: 12 Resulting Decimals: 5	Multiplied by QTR for the *settlement hour*.		
105	Congestion Management Settlement Credit for Energy	1	3	Yes	AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSI, BE) OP(EMP, DQSI, BE) OP(EMP, AQEI, BE) OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
106	Congestion Management Settlement Credit for 10 Minute Spinning Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
107	Congestion Management Settlement Credit for 10 Minute Non-spinning Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
108	Congestion Management Settlement Credit for 30 Minute Operating Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
111	Northern Pulp and Paper Mill Electricity Transition Program Settlement Amount	1	3	No				
112	Ontario Power Generation Rebate	2	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
113	Additional Compensation for Administrative Pricing Credit	1	3	Yes	For the calculation outlined in 7.8.4A.16 only: for dispatchable *facilities* located within Ontario only AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	(For the calculation outlined in 7.8.4A.16 only) For dispatchable *facilities* located within Ontario only: Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	For the calculation outlined in 7.8.4A.16 only: Numerators: for dispatchable *facilities* located within Ontario: OP(EMP, AQEI, BE) OP(EMP, AQEW, BL) for Imports or Exports: OP(EMP, DQSI, BE) OP(EMP, DQSW, BL) Denominator: 12 Resulting Decimals: 2	(For the calculation outlined in 7.8.4A.16 only) The results are used in the final calculation
114	Outage Cancellation/ Deferral Settlement Credit	2	2	No				
115	Unrecoverable Testing Costs Credit	2	2	No				
116	Tieline Maintenance Reliability Credit	2	2	No				
118	Emergency Energy Rebate	1	3	No				
119	Station Service Reimbursement Credit	2	2	No				
120	Local Market Power Debit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
121	Northern Industrial Electricity Rate Program Settlement Amount	1	3	No				
122	Ramp Down Settlement Amount	1	3	Yes	AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSI, BE) OP(EMP, DQSI, BE) OP(EMP, AQEI, BE) OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.
130	Intertie Offer Settlement Credit – Energy	1	3	Yes	Numerators OP(EMP, MQSI, BE) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
133	Generator Cost Guarantee Payment	1	3	No				
134	Demand Response Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
135	Real-time Import Failure Charge	1	3	Yes	**TERM 1 – Failure Charge** Numerator: EMP + PB_IM – PD_EMP Denominator: 12 Resulting Decimals: 2 **TERM 2 – Price Cap** Numerator: MAX(0,EMP) * RT_ISD Denominator: 12 Resulting Decimals: 2	TERM 1 and TERM 2 compared as applicable.		
136	Real-time Export Failure Charge	1	3	Yes	**TERM 1 – Failure Charge** Numerator: PD_EMP – EMP – PB_EX Denominator: 12 Resulting Decimals: 2 **TERM 2 – Price Cap** Numerator: MAX(0,PD_EMP) * RT_ESD Denominator: 12 Resulting Decimals: 2	TERM 1 and TERM 2 compared as applicable.		
140	Fixed Energy Rate Settlement Amount	1	3	No				
141	Fixed Wholesale Charge Rate Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
142	Regulated Price Plan Settlement Amount	1	3	No				
143	NUG Contract Adjustment Settlement Amount	1	3	No				
144	Regulated Nuclear Generation Adjustment Amount	1	3	No				
145	Regulated Hydroelectric Generation Adjustment Amount	1	3	No				
146	Global Adjustment Settlement Amount	1	3	No				
147	Class A – Global Adjustment Settlement Amount	1	3	No				
148	Class B – Global Adjustment Settlement Amount	1	3	No				
149	Regulated Price Plan Retailer Settlement Amount	1	3	No				
150	Net Energy Market Settlement Uplift	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
155	Congestion Management Settlement Uplift	1	3	No				
161`	Northern Pulp and Paper Mill Electricity Transition Program Balancing Amount	1	3	No				
162	Ontario Power Generation Rebate Debit	1	3	No				
163	Additional Compensation for Administrative Pricing Debit	1	3	No				
164	Outage Cancellation/ Deferral Debit	1	3	No				
165	Unrecoverable Testing Costs Debit	1	3	No				
166	Tieline Reliability Maintenance Debit	1	3	No				
167	Emergency Energy and EDRP Debit	1	3	No				
168	TR Market Shortfall Debit	1	3	No				
169	Station Service Reimbursement Debit	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
170	Local Market Power Rebate	1	3	No				
171	Northern Industrial Electricity Rate Program Balancing Amount	1	3	No				
183	Generator Cost Guarantee Recovery Debit	1	3	No				
184	Demand Response Debit	2	2	No				
186	Intertie Failure Charge Rebate	1	3	No				
190	Fixed Energy Rate Balancing Amount	2	2	No				
191	Fixed Wholesale Charge Rate Balancing Amount	2	2	No				
192	Regulated Price Plan Balancing Amount	2	2	No				
193	NUG Contract Adjustment Balancing Amount	2	2	No				
194	Regulated Nuclear Generation Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
195	Regulated Hydroelectric Generation Balancing Amount	2	2	No				
196	Global Adjustment Balancing Amount	2	2	No				
197	Global Adjustment-Special Programs Balancing Amount	2	2	No				
198	Renewable Generation Balancing Amount	2	2	No				
199	Regulated Price Plan Retailer Balancing Amount	2	2	No				
200	10 Minute Spinning Reserve Market Settlement Credit.	1	2	No				
201	10 Minute Spinning Reserve Market Shortfall Rebate	1	3	No				
202	10 Minute Non-spinning Reserve Market Settlement Credit	1	2	No				
203	10 Minute Non-spinning Reserve Market Shortfall Rebate	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
204	30 Minute Operating Reserve Market Settlement Credit	1	2	No				
205	30 Minute Operating Reserve Market Shortfall Rebate	1	3	No				
250	10 Minute Spinning Market Reserve Hourly Uplift	1	3	No				
251	10 Minute Spinning Market Reserve Shortfall Debit	1	3	No				
252	10 Minute Non-spinning Market Reserve Hourly Uplift	1	3	No				
253	10 Minute Non-spinning Market Reserve Shortfall Debit	1	3	No				
254	30 Minute Operating Reserve Market Hourly Uplift	1	3	No				
255	30 Minute Operating Reserve Market Shortfall Debit	1	3	No				
400	Black Start Capability Settlement Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
404	Regulation Service Settlement Credit	2	2	No				
406	Emergency Demand Response Credit	2	2	No				
410	IESO-Controlled Grid Special Operations Credit	2	2	No				
450	Black Start Capability Settlement Debit	1	3	No				
451	Hourly Reactive Support and Voltage Control Settlement Debit	1	3	No				
452	Monthly Reactive Support and Voltage Control Settlement Debit	1	3	No				
454	Regulation Service Settlement Debit	1	3	No				
460	IESO-Controlled Grid Special Operations Debit	2	2	No				
500	Must Run Contract Settlement Credit	2	2	No				
550	Must Run Contract Settlement Debit	1	3	No				
600	Network Service Credit	2	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
601	Line Connection Service Credit	2	3	No				
602	Transformation Connection Service Credit	2	3	No				
603	Export Transmission Service Credit	1	2	No				
650	Network Service Charge	2	3	No				
651	Line Connection Service Charge	2	3	No				
652	Transformation Connection Service Charge	2	3	No				
653	Export Transmission Service Charge	1	2	No				
700	Dispute Resolution Settlement Credit	2	2	No				
702	Debt Retirement Credit	2	2	No				
703	Rural and Remote Settlement Credit	2	2	No				
704	OPA Administration Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
750	Dispute Resolution Settlement Debit	2	2	No				
751	Dispute Resolution Board Service Debit	2	2	No				
752	Debt Retirement Charge	2	3	No				
753	Rural and Remote Settlement Debit	2	3	No				
754	OPA Administration Charge	1	3	No				
850	Market Participant Default Settlement Debit (recovery)	2	2	No				
851	Market Participant Default Interest Debit	2	2	No				
900	GST/HST Credit	2	2	No				
950	GST/HST Debit	2	2	No				
1050	Self-Induced Dispatchable Load CMSC Clawback	1	3	Yes	AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) OP(EMP, MC, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.
1051	Ramp-Down CMSC Claw Back	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1130	Day-Ahead Intertie Offer Guarantee Settlement Credit	1	3	Yes	**FOR EACH 5-MINUTE *METERING INTERVAL:*** Numerators OP[EMP, MIN(DQSI, PDR_DQSI), PDR_BE] Denominator: 12 Resulting Decimals: 2	Results for each 5-minute *metering interval* are summed for the hour. Profits compared as applicable.		
1131	Intertie Offer Guarantee Settlement Credit	1	3	Yes	**For each 5 minute metering interval:** **RT-IOG – Real Time IOG** Numerator OP(EMP,MQSI,BE) Denominator: 12 Resulting Decimal: 2 **DA-IOG - Day-Ahead IOG** **Component 1** Numerator OP(EMP, Min(DA_DQSI,DQSI),DA_BE) Denominator: 12	**For DA-IOG**, Component 1, Component 2 and Component 3 are compared as applicable. Results of RT-IOG and DA-IOG are compared in IOG OFFSET component.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
					Resulting Decimal: 2 **Component 2** Numerator XDA_BE – MAX(0,XBE) Denominator: 12 Resulting Decimal: 2 **Component 3** Numerator OP(EMP,MQSI,BE), OP(EMP,DA_DQSI,BE) OP(EMP,DQSI,BE) Denominator: 12 Resulting Decimal: 2			
1133	Day-Ahead Generation Cost Guarantee Payment	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1134	Day-Ahead Linked Wheel Failure Charge	1	3	Yes	**RT_EFC_DALW and RT_IFC_DALW for each 5-minute metering interval are summed for the hour.** **Resulting Decimal: 2**	**Results are compared as applicable.**		
1135	Day-Ahead Import Failure Charge	1	3	Yes	**TERM 1 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSI, DA_BE) OP(PD_EMP, PD_DQSI, DA_BE) Resulting Decimals: 2 **TERM 2 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSI, PD_BE) OP(PD_EMP, PD_DQSI, PD_BE) Resulting Decimals: 2	TERM 1, TERM 2 and TERM 3 compared as applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
					TERM 3 – Price cap Numerator Max(0,PD_EMP) x DA_ISD Denominator: 12 Resulting Decimals: 2			

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1136	Day-Ahead Export Failure Charge	1	3	Yes	**TERM 1 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSW, DA_BL) OP(PD_EMP, PD_DQSW, DA_BL) Resulting Decimals: 2 **TERM 2 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSW, PD_BL) OP(PD_EMP, PD_DQSW, PD_BL) Resulting Decimals: 2	TERM 1, TERM 2 and TERM 3 compared as applicable.		
1137	Intertie Offer Guarantee Reversal	2	2	No				
1138	Day-Ahead Fuel Cost Compensation Credit	2	2	No				
1139	Intertie Failure Charge Reversal	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1188	Day-Ahead Fuel Cost Compensation Debit	1	3	No				
1300	Capacity Based Demand Response Program Availability Payment Settlement Amount	1	3	No				
1301	Capacity Based Demand Response Program Availability Over-Delivery Settlement Amt	1	3	No				
1302	Capacity Based Demand Response Program Availability Set-Off Settlement Amount	1	3	No				
1303	Capacity Based Demand Response Program Utilization Payment Settlement Amount	1	3	No				
1304	Capacity Based Demand Response Program Utilization Set-Off Settlement Amount	1	3	No				
1305	Capacity Based Demand Response Program Planned Non-Performance Event Set-Off Amt	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1306	Capacity Based Demand Response Program Measurement Data Set-Off Settlement Amt	1	3	No				
1307	Capacity Based Demand Response Program Buy-Down Settlement Amount	1	3	No				
1308	Capacity Based Demand Response Program Performance Breach Settlement Amount	1	3	No				
1309	Demand Response Pilot – Availability Payment	1	3	No				
1310	Demand Response Pilot – Availability Clawback	1	3	No				
1311	Demand Response Pilot – Availability Charge	1	3	No				
1312	Demand Response Pilot – Availability Adjustment	1	3	No				
1313	Demand Response Pilot – Demand Response Bid Guarantee	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1314	Demand Response Capacity Obligation – Availability Payment	1	3	No				
1315	Demand Response Capacity Obligation – Availability Charge	1	3	No				
1316	Demand Response Capacity Obligation – Administration Charge	1	3	No				
1317	Demand Response Capacity Obligation – Dispatch Charge	1	3	No				
1318	Demand Response Capacity Obligation – Capacity Charge	1	3	No				
1319	Demand Response Capacity Obligation – Buy-Out Charge	1	3	No				
1330	On behalf of *Former* OPA for the DR2 Program – Availability Payment Settlement Amount	1	3	No				
1331	On behalf of *Former* OPA for the DR2 Program – Availability Set-Off Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1332	On behalf of *Former* OPA for the DR2 Program – Utilization Payment Settlement Amount	1	3	No				
1333	On behalf of *Former* OPA for the DR2 Program – Utilization Set-Off Settlement Amount	1	3	No				
1334	On behalf of *Former* OPA for the DR2 Program – Meter Data Set-Off Settlement Amount	1	3	No				
1335	On behalf of *Former* OPA for the DR2 Program – Buy-Down Settlement Amount	1	3	No				
1336	On behalf of *Former* OPA for the DR2 Program – Miscellaneous Settlement Amount	1	3	No				
1340	On behalf of *Former* OPA for the DR3 Program – Availability Payment Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1341	On behalf of *Former* OPA for the DR3 Program – Availability Over-Delivery Settlement Amt	1	3	No				
1342	On behalf of *Former* OPA for the DR3 Program – Availability Set-Off Settlement Amount	1	3	No				
1343	On behalf of *Former* OPA for the DR3 Program – Utilization Payment Settlement Amount	1	3	No				
1344	On behalf of *Former* OPA for the DR3 Program – Utilization Set-Off Settlement Amount	1	3	No				
1345	On behalf of *Former* OPA for the DR3 Program – Planned Non-Performance Event Set-Off Amt	1	3	No				
1346	On behalf of *Former* OPA for the DR3 Program – Meter Data Set-Off Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1347	On behalf of *Former* OPA for the DR3 Program – Buy-Down Settlement Amount	1	3	No				
1348	On behalf of *Former* OPA for the DR3 Program – Miscellaneous Settlement Amount	1	3	No				
1350	Capacity Based Recovery Amount for Class A Loads	1	3	No				
1351	Capacity Based Recovery Amount for Class B Loads	1	3	No				
1380	Demand Response 2 Availability Payment Balancing Amount	2	2	No				
1381	Demand Response 2 Availability Set-Off Balancing Amount	2	2	No				
1382	Demand Response 2 Utilization Payment Balancing Amount	2	2	No				
1383	Demand Response 2 Utilization Set-Off Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1384	Demand Response 2 Meter Data Set-Off Balancing Amount	2	2	No				
1385	Demand Response 2 Buy-Down Balancing amount	2	2	No				
1386	Demand Response 2 Miscellaneous Balancing amount	2	2	No				
1390	Demand Response 3 Availability Payment Balancing Amount	2	2	No				
1391	Demand Response 3 Availability Over-Delivery Balancing Amount	2	2	No				
1392	Demand Response 3 Availability Set-Off Balancing Amount	2	2	No				
1393	Demand Response 3 Utilization Payment Balancing Amount	2	2	No				
1394	Demand Response 3 Utilization Set-Off Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1395	Demand Response 3 Planned Non-Performance Event Set-Off Balancing Amount	2	2	No				
1396	Demand Response 3 Meter Data Set-Off Balancing Amount	2	2	No				
1397	Demand Response 3 Buy-Down Balancing Amount	2	2	No				
1398	Demand Response 3 Miscellaneous Balancing Amount	2	2	No				
1400	OPA Contract Adjustment Settlement Amount	1	2	No				
1401	Incremental Loss Settlement Credit	1	6	No				
1402	Hourly Condense System Constraints Settlement Credit	1	5	No				
1403	Speed-no-load Settlement Credit	1	2	No				
1404	Condense Unit Start-up and OM&A Settlement Credit	1	2	No				
1405	Hourly Condense Energy Costs Settlement Credit	1	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1406	Monthly Condense Energy Costs Settlement Credit	1	2	No				
1407	Condense Transmission Tariff Reimbursement Settlement Credit	2	3	No				
1408	Condense Availability Cost Settlement Credit	1	2	No				
1409	Monthly Condense System Constraints Settlement Credit	1	2	No				
1410	Renewable Energy Standard Offer Program Settlement Amount	1	3	No				
1411	Clean Energy Standard Offer Program Settlement Amount	1	3	No				
1412	Feed-In Tariff Program Settlement Amount	1	3	No				
1413	Renewable Generation Connection – Monthly Compensation Settlement Credit	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1414	Hydroelectric Contract Initiative Settlement Amount	1	3	No				
1415	Conservation Assessment Recovery	1	3	No				
1416	Conservation and Demand Management - Compensation Settlement Credit	1	3	No				
1417	Daily Condense Energy Costs Settlement Credit	1	2	No				
1418	Biomass Non-Utility Generation Contracts Settlement Amount	1	3	No				
1419	Energy from Waste (EFW) Contracts Settlement Amount	1	3	No				
1420	Ontario Electricity Support Program Settlement Amount	2	2	No				
1421	Capacity Agreement Settlement Credit	0	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1422	Capacity Agreement Penalty Settlement Amount	0	2	No				
1423	Energy Sales Agreement Settlement Credit	0	3	No				
1424	Energy Sales Agreement Penalty Settlement Amount	0	2	No				
1450	OPA Contract Adjustment Balancing Amount	2	2	No				
1451	Incremental Loss Offset Settlement Amount	2	2	No				
1460	Renewable Energy Standard Offer Program Balancing Amount	2	2	No				
1461	Clean Energy Standard Offer Program Balancing Amount	2	2	No				
1462	Feed-In Tariff Program Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1463	Renewable Generation Connection – Monthly Compensation Settlement Debit	1	3	No				
1464	Hydroelectric Contract Initiative Balancing Amount	2	2	No				
1465	Ontario Clean Energy Benefit (-10%) Program Balancing Amount	2	2	No				
1466	Conservation and Demand Management - Compensation Balancing Amount	2	2	No				
1467	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount	2	2	No				
1468	Biomass Non-Utility Generation Contracts Balancing Amount	2	2	No				
1469	Energy from Waste (EFW) Contracts Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1470	Ontario Electricity Support Program Balancing Amount	2	3	No				
1471	Capacity Agreement Balancing Amount	2	2	No				
1472	Capacity Agreement Penalty Balancing Amount	2	2	No				
1473	Energy Sales Agreement Balancing Amount	2	2	No				
1474	Energy Sales Agreement Penalty Balancing Amount	2	2	No				
1500	Day-Ahead Production Cost Guarantee Payment – Component 1 and Component 1 Clawback	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, DA_BE),	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, DA_BE), OP(EMP,DQSI, DA_BE), OP(EMP,DA_DQSI, DA_BE) Denominator: 12 Resulting Decimal: 2	Profits are compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
							Numerator DA_SNLC Denominator: 12 Resulting decimal : 2 Results for each 5-minute metering interval are summed for the hour.	
1501	Day-Ahead Production Cost Guarantee Payment – Component 2	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, DA_BE), OP(EMP,AQEI, BE)	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, DA_BE), OP(EMP,DQSI, DA_BE), OP(EMP,DA_DQSI, DA_BE) OP(EMP,OPCAP, DA_BE) OP(EMP,AQEI, BE), OP(EMP,DQSI, BE), OP(EMP,DA_DQSI, BE) OP(EMP,OPCAP, BE) Resulting Decimal: 2	Profits are compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1502	Day-Ahead Production Cost Guarantee Payment – Component 3 and Component 3 Clawback	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, BE),	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, BE), OP(EMP,DQSI, BE), OP(EMP,DA_DQSI, BE) OP(EMP,MLP, BE) Results for each 5-minute metering interval are summed for the hour. Resulting Decimal: 2	Profits are compared as applicable.
1503	Day-Ahead Production Cost Guarantee Payment – Component 4	1	3	Yes	**For each 5 minute metering interval:** Numerators OP(PROR,30R_SQROR,BR), OP(PROR,10NS_SQROR,BR), OP(PROR,10S_SQROR,BR), Denominator: 12 Resulting Decimal: 2	Profits are compared as applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1504	Day-Ahead Production Cost Guarantee Payment – Component 5	1	3	No				
1505	Day-Ahead Production Cost Guarantee Reversal	1	3	No				
1510	Day-Ahead Generator Withdrawal Charge	1	3	Yes	**For each 5 minute metering interval:** Numerators OP(EMP,MLP,DA_BE) or OP(PD_EMP,MLP,DA_BE) Denominator: 12 Resulting Decimal: 2	Results for each 5-minute metering interval are summed for the hour.		
1550	Day-Ahead Production Cost Guarantee Recovery Debit	1	3	No				
1560	Day-Ahead Generator Withdrawal Rebate	1	3	No				
1600	Forecasting Service Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1650	Forecasting Service Balancing Amount	1	3	No				
9920	Adjustment Account Credit	1	1	No				
9980	Smart Metering Charge	2	2	No				
9982	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount	2	2	No				
9990	IESO Administration Charge	2	3	No				
9992	Ontario Clean Energy Benefit (-10%) Program Settlement Amount	2	2	No				
9996	Recovery of Costs	2	2	No				

2.5 Settlement of Physical Bilateral Contracts

2.5.1 Governing Rules

Settlement of *physical bilateral contracts* is discussed in Section 2.1 of Chapter 8, of the *IESO market rules*. In summary this particular *market rules* Section prescribes the prices to be applied to a *Physical Bilateral Contract Quantity of Energy Sold* ($BCQ_{k,b,h}^{m,t}$) or a *Physical Bilateral Contract Quantity of Energy Bought* ($BCQ_{s,k,h}^{m,t}$) at a *delivery point* or an *intertie metering point.* This treatment is summarized in the table below with respect to each settlement variable defined in **Section 2.1** and *charge type* described in **Section 2.2** of this document.

Location of Bilateral Contract	Settlement of Selling Market Participant	Settlement of Buying Market Participant	Charge Type
Non-dispatchable *delivery point*	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the *Hourly Ontario Energy Price* (HOEP).	101
Dispatchable *delivery point*	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	100
Intertie Metering Point	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-minute Energy Market Price at the *Interties* ($EMP_h^{i,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the 5-minute Energy Market Price at the *Interties* ($EMP_h^{i,t}$).	100

These financial credits and debits are then included the overall *settlement amounts* calculated for *charge types* 100 and 101 as per the equations in **Section 2.2**.

2.5.2 The Nature of the Bilateral Contract Quantity

$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought.	Physical bilateral contract quantity of *energy* in MWh bought by *buying market participant* 'k' from *selling market participant* '*s*' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold.	Physical bilateral contract quantity of *energy* in MWh sold by *selling market participant* 'k' to *buying market participant* 'b' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.

The submission of *physical bilateral contract data* is governed by Section 2.4 of Chapter 8 of the *IESO market rules*. Furthermore, Section 2.3 of Chapter 8 describes 2 distinct "forms" of *physical bilateral contract data* that may be submitted by the *selling market participant*. Specifically, the two forms of such data are as follows:

1. **Absolute quantities:** specifying the absolute quantity of *energy* in MWh sold by the *selling market participant* to the *buying market participant* for each *settlement hour* at a particular *delivery point* or *intertie metering point*; and
2. **Derived quantities****:** specifying that the *physical bilateral contract quantity* shall be 100% of the *energy* sold by the *selling market participant* to the *buying market participant* for each *settlement hour* as derived from a particular *delivery point* value (i.e. NOT an *intertie metering point*).

Where:

- The *delivery point* chosen by the *selling market participant* must belong to either the *selling market participant* or the buying *market participant*.
- If the *delivery point* is designated as a sub-type 'I' (injection) *delivery point*, 100% of all injected *energy* for each *metering interval* in each applicable *settlement hour* shall be used regardless of any *physical allocation data*.
- If the *delivery point* is designated as a sub-type 'W' (withdrawal) *delivery point*, 100% of all withdrawn *energy* for each *metering interval* in each applicable *settlement hour* shall be used regardless of any *physical allocation data*.

***** See derived quantities examples that follow.**

Derived Quantities Example 1: *Delivery point* belongs to the *SELLING market participant* and is a sub-type 'I' (injection) *delivery point.* (note parity with EXAMPLE 3)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	10	10	10	0	0	0	**10**	**10**	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	I	I	I	I	I	I	**W**	**W**	I	I	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	10	10	10	0	0	0	**0**	**0**	0	0	10	10
Total Quantity for the hour	50 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 2: *Delivery point* belongs to the *SELLING market participant* and is a sub-type 'W' (Withdrawal) *delivery point.* (note parity with EXAMPLE 4)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	**10**	**10**	**10**	0	0	0	10	10	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	**I**	**I**	**I**	W	W	W	W	W	W	W	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	**0**	**0**	**0**	0	0	0	10	10	0	0	0	0
Total Quantity for the hour	20 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 3: *Delivery point* belongs to the *BUYING market participant* and is a sub-type 'I' (injection) *delivery point.* (note parity with EXAMPLE 1)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	10	10	10	0	0	0	**10**	**10**	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	I	I	I	I	I	I	**W**	**W**	I	I	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	10	10	10	0	0	0	**0**	**0**	0	0	10	10
Total Quantity for the hour	50 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 4: *Delivery point* belongs to the *BUYING market participant* and is a sub-type 'W' (Withdrawal) *delivery point.* (note parity with EXAMPLE 2)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	**10**	**10**	**10**	0	0	0	10	10	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	**I**	**I**	**I**	W	W	W	W	W	W	W	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	**0**	**0**	**0**	0	0	0	10	10	0	0	0	0
Total Quantity for the hour	20 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

2.5.3 Time Resolution of Bilateral Contract Quantities and Rounding

Where a *physical bilateral contract* takes place at a non-dispatchable *delivery point*, the *Physical Bilateral Contract Quantity* of Energy Bought is reported by *settlement hour* as per the *market rules* (because the *Hourly Ontario Energy Price* is applied to this quantity – see Chapter 9, Section 3.3). At the same location however, the 'Physical Bilateral Contract Quantity of Energy Sold' is debited at the 5-minute energy market price. This latter, sold quantity must therefore be divided into 12, equal *metering intervals* (see Chapter 9, Section 3.1.6 of the *market rules*) and rounded to the appropriate number of significant digits (see Section 2.4 of this document). As a result, the summation of these 12, equal quantities may not equal the original, hourly value submitted in some circumstances due to this intermediate rounding. The table below summarizes this phenomenon in terms of the location sub-type and the applicable *charge type* used. The reader is directed to Section 2.4 of this document for further details.

		Location Type	Charge Type	Time Resolution used for settlements purposes	Intermediate Rounding Applied within Settlements System?
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought.	Dispatchable *Delivery Point* (injection or withdrawal sub-type)	100	by *metering interval*	Yes – See Section 2.4
		Non-Dispatchable *Delivery Point* (injection or withdrawal sub-type)	101	by *settlement hour*	No
		Intertie metering point	100	by *metering interval*	Yes – See Section 2.4
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold.	Dispatchable *Delivery Point* (injection or withdrawal sub-type)	100	by *metering interval*	Yes – See Section 2.4
		Non-Dispatchable *Delivery Point* (injection or withdrawal sub-type)	101	by *metering interval*	Yes – See Section 2.4
		Intertie metering point	100	by *metering interval*	Yes – See Section 2.4

2.5.4 Allocation of Hourly Uplift Components Between Buying and Selling Market Participants

Hourly uplift is defined in Section 3.9.1 of Chapter 9 of the *IESO market rules* and may be "disaggregated" (sic) on *settlement statements* into its component parts as per Section 3.9.2. The following components *hourly uplift* charges may be allocated from the *buying market participant* to the *selling market participant* as per the *physical bilateral contract data* submitted by the *selling market participant* (see also, *IESO market rules*, Chapter 8, Section 2.2.2).

Hourly Uplift Component Group	Associated Charge Types	Comments
Net Energy Market Settlement Credit (NEMSC) Hourly Uplift Component (also known as the "Losses" component)	150	• This hourly uplift component is an aggregation of *charge types* 100 (NEMSC), 101 (NEMSC), 104 (TRSC), and 103 (TCRF),. The aggregation of these *charge types* mathematically resolves down to the value of the difference between AQEI, AQEW, SQEW and SQEI quantities valued at the 5-minute Energy Market Reference Price ($EMP_h^{REF,t}$) for each *metering interval* in the *settlement hour* .
Operating Reserve Settlement Credit (ORSC) Hourly Uplift Component	250 252 254	• Separate *charge types* for recovery of ORSC *settlement amounts* paid to *market participants* for each class of *operating reserve*.
Intertie Failure Charge Rebate (IFCR) Hourly Uplift Component	186	Two components as follows: 1) *Charge type* 186: an aggregation of *charge types* 135 (Real-time Import Failure Charge), 136 (Real-time Export Failure Charge), 1134 (Day-Ahead Linked Wheel Failure Charge, 1135 (Day-Ahead Import Failure Charge) and 1136 (Day-Ahead Export Failure Charge). These *charge types* are primarily rebates back to *market participants* for amounts collected under these charges.
Congestion Management Settlement Credit (CMSC) Hourly Uplift Component	155	• Includes recovery of CMSC payments for *energy* and each class of *operating reserve*.

Hourly Uplift Component Group	Associated Charge Types	Comments
Transmission Rights Settlement Credit (TRSC) Hourly Uplift Component	NOT USED	• INCLUDED WITH THE "NET ENERGY MARKET SETTLEMENT CREDIT (NEMSC) Hourly Uplift COMPONENT". • SEE NOTE ABOVE.
Transmission Charge Reduction Fund (TCRF) Hourly Uplift Component	NOT USED	• INCLUDED WITH THE "NET ENERGY MARKET SETTLEMENT CREDIT (NEMSC) Hourly Uplift COMPONENT". • SEE NOTE ABOVE.
Operating Reserve Shortfall Settlement Debit (ORSSD) Hourly Uplift Component	201 203 205	• Separate *charge types* for distribution of ORSSD *settlement amounts* received from *market participants* for shortfalls in the provision of each class of *operating reserve.*

Each hourly uplift component group (i.e. not the individual *charge types* themselves) may be selected in any combination when the *physical bilateral contract data* is submitted by the *selling market participant*. Confirmation of this selection is included within the *settlement statement* supporting data files (type "B" records). A schematic overview of the format of type "B" records may be found within Table 3-2 of the *IESO's* Technical Interface Document entitled, "Format Specification for Settlement Statement Files and Data Files".

The effect of selecting an hourly uplift component group within *physical bilateral contract data,* is the creation of a "Reallocate Quantity (RQ)".

The RQ specific to a single *physical bilateral contract* is exactly equal to the quantity of *energy* involved in the contract itself.

The RQ specific to a single *market participant* is equal to the sum of all RQ quantities for which the *market participant* is the *selling market participant*, minus the sum of all RQ quantities for which the *market participant* is the *buying market participant*.

The RQ specific to a single *market participant* for a particular hourly uplift component group is equal to the sum of all RQ quantities designated to for that particular hourly uplift component group within *physical bilateral contract data* for which the *market participant* is the *selling market participant*, minus the sum of all RQ quantities for which the *market participant* is the *buying market participant*.

This RQ quantity is then applied to the calculation of the *settlement amounts* for each *charge type* associated with the hourly uplift component group as per the table above.

Therefore, when calculating the RQ quantity for a particular hourly uplift *charge type* for *market participant* 'k' at a particular location 'm' during a particular *metering interval* 't', the quantity may be expressed as follows:

$$RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$$

Where all variables are defined as per **Section 2.1**.

The RQ quantity is then used to either augment or decrease the *settlement amount* for the hourly uplift *charge type* "c" as follows:

$$\sum_c^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$$

Where all variables are defined as per **Section 2.1**.

In the event that the term,

$$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) < 0$$

Where:

$$RQ_{k,h}^{m,t} < 0 \text{ and } \left|RQ_{k,h}^{m,t}\right| > \left|(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})\right| \text{ and } TD_{k,h,c} > 0$$

The calculation of the applicable hourly uplift charge type "c" will yield a net credit to the *buying market participant* as a result of the reallocated quantity exceeding their actual/scheduled withdrawals of *energy* for the *metering interval* 't' in question.

The above mechanism applies to those "associated charge types" that are enumerated in the table at the beginning of this Section. See Section 2.2 for specific listings of *charge types* and their respective equations.

2.6 Exemptions from the Day-Ahead Import Failure Charge, Day-Ahead Export Failure Charge, and Day-Ahead Linked Wheel Failure Charge

2.6.1 Purpose of this Section

This section describes how Day-Ahead Import transactions are subject to an "*Offer* Price Test" in order to determine if they are exempt from the Day-Ahead Import Failure Charge (*charge type* 1135), Day-Ahead Export Failure Charge (*charge type* 1136) and Day-Ahead Linked Wheel Failure Charge (*charge type* 1134)[2].

Generally speaking the applicability of the five Intertie Failure charges[3] is affected by the "Reason Codes" attached to the applicable *interchange schedule* received by the *Settlement Process*. The impact of these Reason Codes is outlined in Table 3-5 of the *IESO* Technical Interface document entitled, "Format Specifications for Settlement Statement Files and Data Files" (IMP_SPEC_0005). As noted in that table however, day-ahead import transactions arranged in the *pre-dispatch-of-record* that include the 'AUTO''NY90' or 'ADQh', or 'ORA' Reason Codes in the resulting real-time dispatch will be further subject to an "Offer Price Test" which determines whether or not the transaction in question is in fact exempt from the Day-Ahead Failure Charges.

2.6.2 Objective of the "Offer Price Test"

The main objective of the Offer Price Test is to grant an exemption from the DA-IFC, DA-EFC and DA-LWFC for those import and export transactions that make a best effort to ensure that they are scheduled in the *real-time market*. The Offer Price Test assesses "best effort" on the basis of the offer price of the transaction itself.

2.6.3 How the Offer Price Test Works

The Offer Price Test is a simple test that is performed on the first lamination of the *real-time market* import *offer*/or export *bid*. The "first lamination" is defined by the first two *price-quantity* ("p-q") *pairs* in the *real-time market offer* curve, where:

- The first *price-quantity pair* contains an *offer* or *bid* price and a quantity of zero; and

[2] The price test for the Day-Ahead Linked Wheel Failure Charge (1134) is used to determine exemption from the RT-EFC-DALW and RT-IFC-DALW portions only.
[3] Specifically, the Real-time Import Failure Charge (*charge type* 135), the Real-time Export Failure Charge (*charge type* 136), the Day-Ahead Import Failure Charge (*charge type* 1135), the Day-Ahead Export Failure Charge (*charge type* 1136) and the Day-Ahead Linked Wheel Failure Charge (*charge type* 1134).

- The second *price-quantity pair* contains the same *offer* or *bid* price as the first *price-quantity pair* and a non-zero quantity.

The Offer Price Test applies to any situation in which a day-ahead import or export transaction has a Reason Code, 'AUTO', 'NY90' 'ADQh', or 'ORA' assigned to the corresponding real-time import or export transaction at the same location. It is applicable to *any intertie metering point* where the underlying constrained scheduling point (CSP) is a "source" (i.e. applicable to imports only) or a "sink" (i.e. applicable to exports only).

If the transaction fails this test; it will not receive exemption status from the DA-IFC or DA-EFC. If the transaction passes this test, then it will be exempted from the DA-IFC or DA-EFC – without actually changing the Reason Code itself.

2.6.4 Input Data:

$DA_DQSI_{k,h}^{i,t}$	=	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'
$PD_DQSI_{k,h}^{i,t}$	=	*Pre- dispatch* constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.
$PD_BE_{k,h}^{i,t}$	=	*Energy offers* submitted in Pre-dispatch, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2
- MMCP	=	The *Minimum Market Clearing Price*.
$DA_DQSW_{k,h}^{i,t}$		Day-ahead constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during metering interval 't' of settlement hour 'h'
$PD_DQSW_{k,h}^{i,t}$		*Pre- dispatch* constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.
$PD_BL_{k,h}^{i,t}$		*Energy bids* submitted in *pre-dispatch*, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement*

hour 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2

+MMCP = The *Maximum Market Clearing Price*.

2.6.5 Decision Logic Applied During the Offer Price Test for Import Transactions:

PART 1:

The first part of the test ensures that the original *schedule-of-record* schedule ($DA_DQSI_{k,h}^{i,t}$) for the import transaction is indeed GREATER THAN the resulting *Pre-dispatch schedule* ($PD_DQSI_{k,h}^{i,t}$) over the course of *settlement hour* 'h'.

IF $\sum^{T} DA_DQSI_{k,h}^{i,t} > \sum^{T} PD_DQSI_{k,h}^{i,t}$

THEN

Proceed to PART 2

ELSE

END of the test for this transaction.

PART 2:

The second part of the test ensures that the first lamination (i.e. as defined by the first 2 *price-quantity pairs*) of the offer curve submitted into the *pre-dispatch scheduling process*:

1) Was large enough to cover the entire quantity of the transaction originally scheduled by the *schedule-of-record* at the same *market participant/intertie metering point* combination (commonly referred to as a "MP/MSP/CSP triplet"); and,
2) Was offered at the *Minimum Market Clearing Price* (*-MMCP*).

The test is as follows:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $PD_BE_{k,h}^{i,t}$ (see above for definition).

IF B[2,2] ≥ $DA_DQSI_{k,h}^{i,t}$ AND B[2,1] = -MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the DA-IFC.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the DA-IFC.

Implications:

- A day-ahead import transaction must be constrained down to a level lower than its original *schedule-of-record* schedule in order to receive exemption status;
- The entire amount of the constrained portion of the transaction must have been offered into the *Pre-dispatch* at *–MMCP* in order to receive exemption status (compare Figures 2-1 and 2-2 to see examples where this condition is met and not met respectively); and
- Only the first lamination (i.e. the first 2 p-q pairs) of the Pre-dispatch offer curve for each import transaction are relevant in performing this test (due to the existing market rule requirement that offer prices must be monotonically increasing).

2.6.6 Decision Logic Applied During the Offer Price Test for Export Transactions:

PART 1:

The first part of the test ensures that the original *schedule-of-record* ($DA_DQSW_{k,h}^{i,t}$) for the export transaction is indeed GREATER THAN the resulting *Pre-dispatch schedule* ($PD_DQSW_{k,h}^{i,t}$) over the course of *settlement hour* 'h'.

IF $\sum^{T} DA_DQSW_{k,h}^{i,t} > \sum^{T} PD_DQSW_{k,h}^{i,t}$

THEN

Proceed to PART 2

ELSE

END of the test for this transaction.

PART 2:

The second part of the test ensures that the first lamination (i.e. as defined by the first 2 *price-quantity pairs*) of the offer curve submitted into the *Pre-dispatch scheduling process*:

1) Was large enough to cover the entire quantity of the transaction originally scheduled by the *schedule-of-record* at the same *market participant/intertie metering point* combination (commonly referred to as a, "MP/MSP/CSP triplet"); and,
2) Was offered at the *Maximum Market Clearing Price* (+*MMCP*).

The test is as follows:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $BL_{k,h}^{i,t}$ (see above for definition).

IF B[2,2] ≥ $DA_DQSW_{k,h}^{i,t}$ AND B[2,1] = +MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the DA-EFC.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the DA-EFC.

Implications:

- A day-ahead export transaction must be constrained down to a level lower than its original *schedule-of-record* in order to receive exemption status;
- The entire amount of the constrained portion of the transaction must have been offered into the *Pre-dispatch* at +*MMCP* in order to receive exemption status (compare Figures 2-1 and 2-2 to see examples where this condition is met and not met respectively); and
- Only the first lamination (i.e. the first 2 p-q pairs) of the Pre-dispatch offer curve for each export transaction are relevant in performing this test (due to the existing *market rule* requirement that *offer* prices must be monotonically decreasing).

2.6.7 Decision Logic Applied During the Offer Price Test for Linked Wheel Transactions:

The test seeks to demonstrate a best efforts attempt to schedule both the import and export legs of a day-ahead linked wheel (DALW) transaction through both:

- A Pre-dispatch bid at positive maximum market clearing price (+MMCP) for a quantity at least equal to the day-ahead export quantity, and
- A Pre-dispatch offer at negative maximum market clearing price (–MMCP) for a quantity at least equal to the day-ahead import quantity.

For import leg of the linked wheel, the decision logic for the price test is described in Section 2.6.5 with the following amendment:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $PD_BE_{k,h}^{i,t}$ (see above for definition).

IF $B[2,2] \geq DA_DQSI_{k,h}^{i,t}$ AND B[2,1] = -MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the **RT-IFC-DALW**.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the **RT-IFC-DALW**.

For export leg of the linked wheel, the decision logic for the price test is described in Section 2.6.6 with the following amendment:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $BL_{k,h}^{i,t}$ (see above for definition).

IF $B[2,2] \geq DA_DQSW_{k,h}^{i,t}$ AND B[2,1] = +MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the **RT-EFC-DALW**.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the **RT-EFC-DALW**.

Figure 2-1 – Example of an Import Transaction that PASSES the "Offer Price Test"

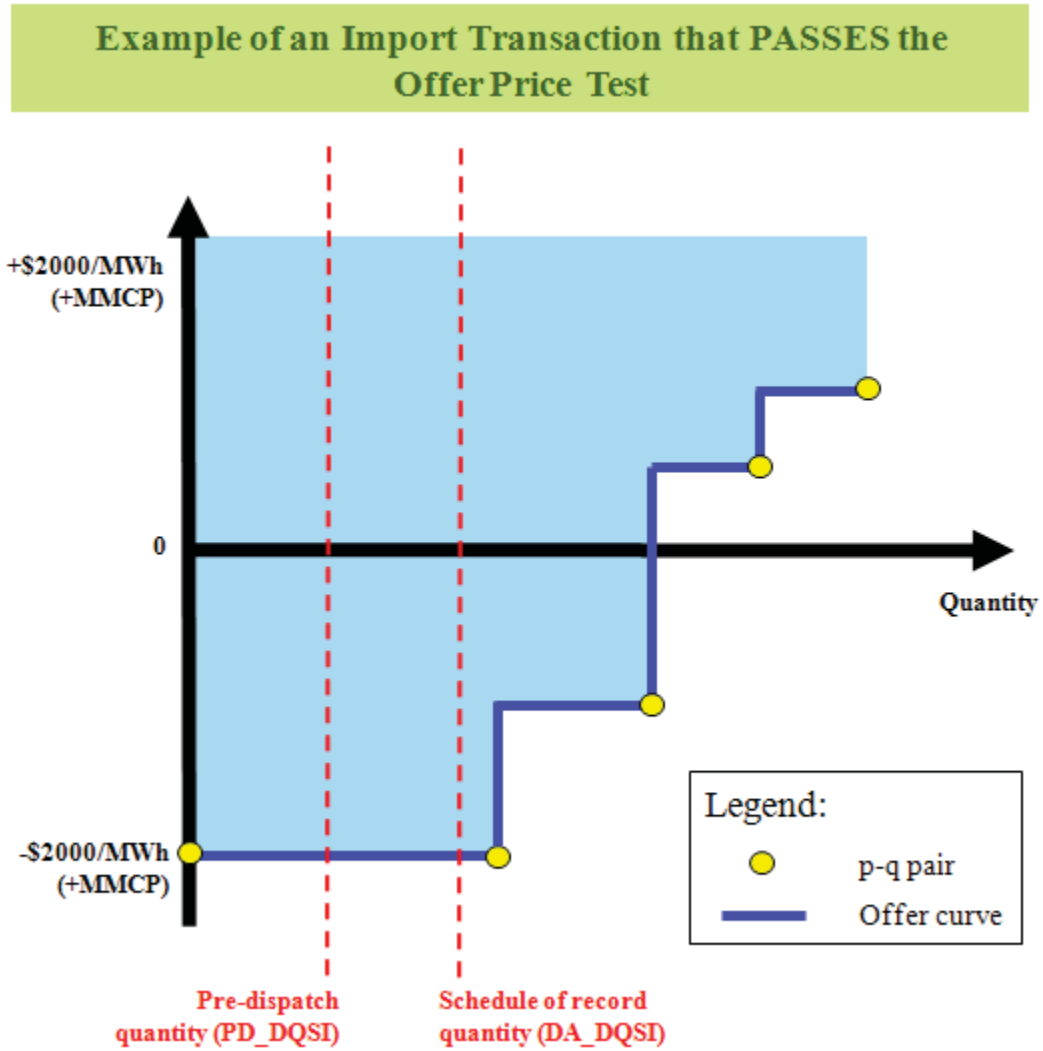


Figure 2-2 – Example of an Import Transaction that FAILS the "Offer Price Test"

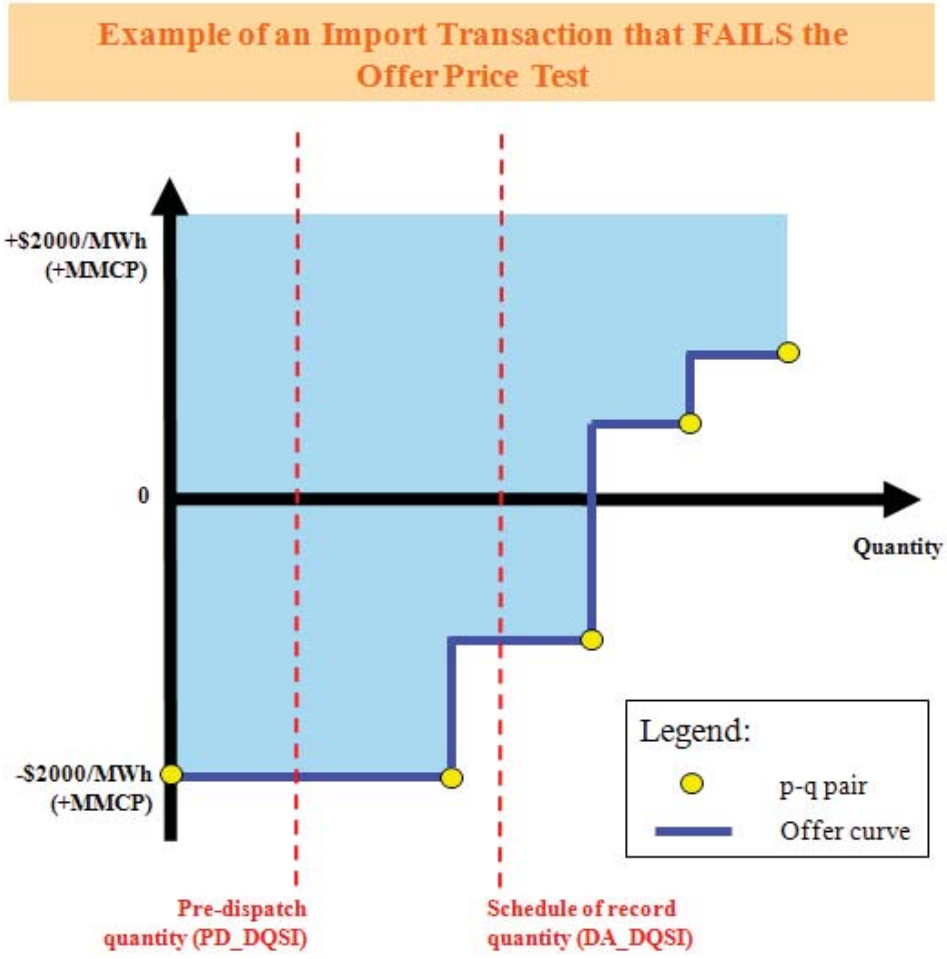


Figure 2-3 – Example of an Export Transaction that PASSES the "Offer Price Test"

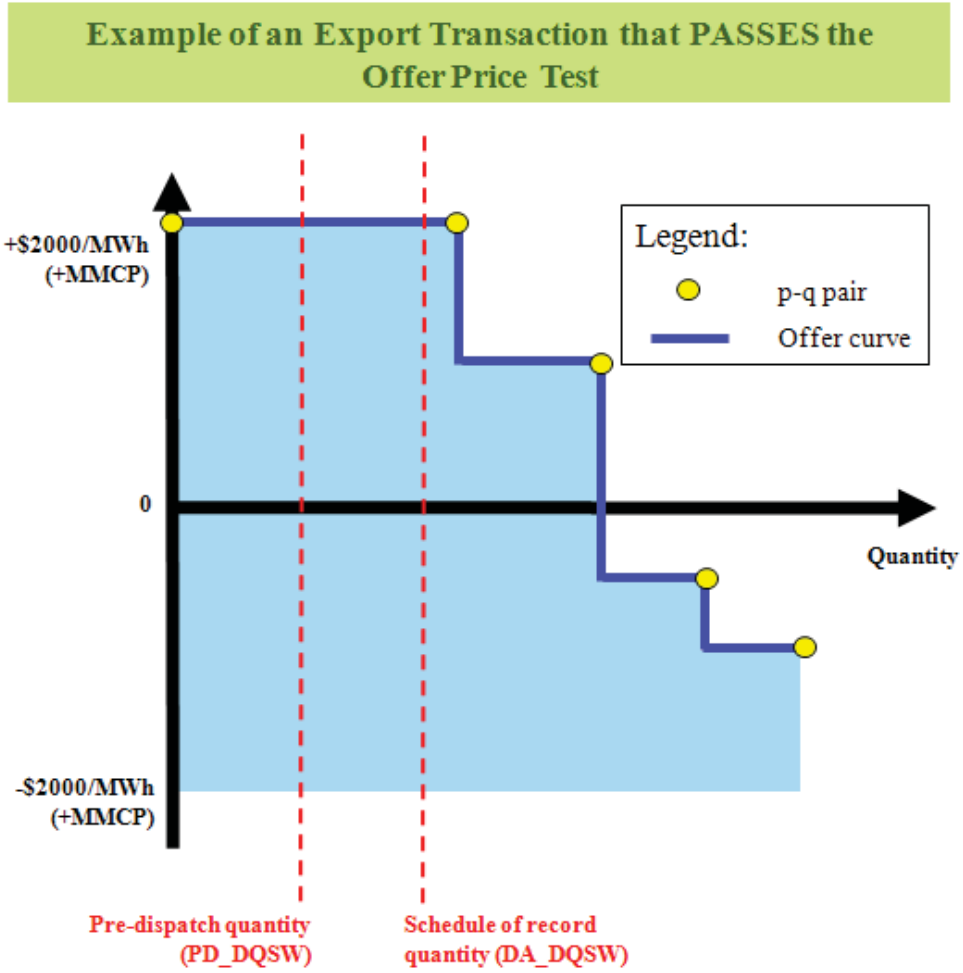
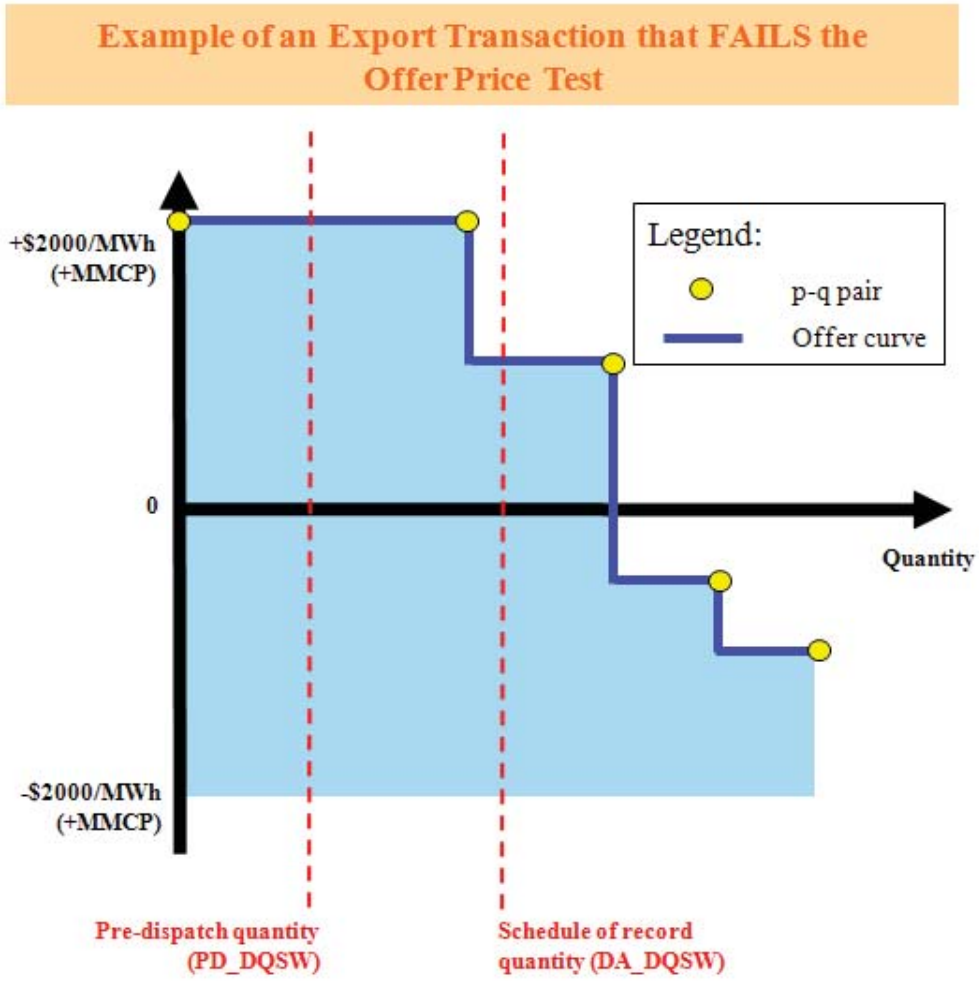


Figure 2-4 – Example of an Export Transaction that PASSES the "Offer Price Test"



- End of Section -

References

Document Name	Doc ID
Market Rules	MDP_RUL_0002
Format Specification for Settlement Statement Files and Data Files	IMP_SPEC_0005
Ontario Energy Board: Ontario Transmission Rate Schedules EB-2007-0759	EB-2007-0759
Order-in-Council 137/2008 Ontario Power Generation Rebate	OIC 137/2008
Ontario Regulation 442/01 "Rural or Remote Electricity Rate Protection	442/01
Ontario Regulation 493/01 "Debt Retirement Charge – Rates and Exemptions"	493/01
Ontario Regulation 494/01 "Debt Retirement Charge Administration"	494/01
Legislative Assembly of Ontario S.O. 2003, Chapter 8 "Bill 4, An Act to amend the *Ontario Energy Board Act, 1998* with respect to electricity pricing." **Royal Assent:** December 18, 2003	Bill 4
Regulations made pursuant to Bill 4 Ontario Regulation 42/04 made under the *Ontario Energy Board Act, 1998*. Ontario Regulation 43/04 made under the *Ontario Energy Board Act, 1998*.	 42/04 43/04
Legislative Assembly of Ontario, Bill 210 – "Electricity Pricing, Conservation and Supply Act, 2002." S.O. 2002, Chapter 23 **Formal Title:** "An Act to amend various Acts in respect of pricing, conservation and supply of electricity an in respect of other matters related to electricity." **Royal Assent:** December 9, 2002	Bill 210

Document Name	Doc ID
Regulations made pursuant to BILL 210 "Electricity Pricing, Conservation and Supply Act, 2002." **Regulation 339/02** (Under the *Ontario Energy Board Act, 1998*) "Electricity Pricing" – amended by regulation 433/02 **Regulation 341/02** (Under the *Ontario Energy Board Act, 1998*) "Compensation and Set-Offs Under Part V of the Act" – amended by regulation 434/02 **Regulation 342/02** (Under the *Ontario Energy Board Act, 1998*) "Payments to the IMO" – revoked by regulation 432/02 **Regulation 432/02** (Under the *Ontario Energy Board Act, 1998)* "Revoking Ontario Regulation 342/02 (Payments to the IMO)" **Regulation 433/02** (Under the *Ontario Energy Board Act, 1998*) "Amending Ontario Regulation 339/02 (Electricity Pricing)" **Regulation 434/02** (Under the *Ontario Energy Board Act, 1998)* "Amending Ontario Regulation 341/02 (Compensation and Set-Offs Under Part V of the Act)" **Regulation 435/02** (Under the *Ontario Energy Board Act, 1998*) "Payments re Section 79.4 of the Act" **Regulation 436/02** (Under the *Ontario Energy Board Act, 1998*) "Payments re Various Electricity-Related Charges" **Regulation 330/09** (Under the *Ontario Energy Board Act, 1998*) "Cost recovery re section 79.1 of the Act"	339/02 (amended by 433/02) 341/02 (amended by 434/02) 342/02 (revoked by 432/02) 433/02 434/02 435/02 436/02 330/09
***Ontario Energy Board*, *Independent Electricity Market Operator* Licence EI-2003-0088, issued on July 30, 2003**	**EI-2003-0088**
Legislative Assembly of Ontario, Bill 100 – "Electricity Restructuring Act, 2004" **Royal Assent:** December 9, 2004 Subject to regulations made pursuant to the "Electricity Restructuring Act, 2004" once proclaimed into force: Ontario regulation 427/04 "Payments to the Financial Corp. re Section 78.2 of the Act" Ontario regulation 428/04 "Payments re Section 79.4 of the Act" Ontario regulation 398/10 Amending Ontario regulation 429/04 "Adjustments Under Section 25.33 of the Act" Ontario regulation 430/04 "Payments re Section 25.33 of the Act"	BILL 100 See also, Ontario e-laws website for official Ontario Government Regulation ID numbers at: http://www.e-laws.gov.on.ca

Document Name	Doc ID
Ontario regulation 431/04 "Payments re Section 25.34 of the Act" Section 78.3 of the (Ontario Energy Board) Act Section 78.4 of the (Ontario Energy Board) Act Section 78.5 of the (Ontario Energy Board) Act	
Ontario regulation 53/05 made under *OEB Act, 1998* re "Payments under Section 78.1 of the Act" Ontario regulation 98/05 made under *OEB Act, 1998* re "Payments re Various Electricity-Related Charges" Ontario Regulation 66/10 made under *OEB Act, 1998* re "Assessments for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs"	BILL 100 See also, Ontario e-laws website for official Ontario Government Regulation ID numbers at: http://www.e-laws.gov.on.ca/
Ontario Clean Energy Benefit Act, 2010, Ontario Regulation 495/10.	
Ontario Regulation 314/15 "Ontario Electricity Support Program"	314/15

– End of Document –

RE_ KPMG Draft opinion.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: KPMG Draft opinion
Date: Monday, August 28, 2017 13:15:38

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Not from us…you may want to check with energy, I believe it was ieso white paper which may have been described as an opinon

Kimberly Marshall | VP, Corporate Services & CFO

Independent Elec

RE_ KPMG and Stikeman opinions.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: KPMG and Stikeman opinions
Date: Tuesday, February 13, 2018 09:15:13

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Ok will see if today or tomorrow is possible

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide S

RE_ KPMG and Stikeman opinions.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
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Date: Tuesday, February 13, 2018 09:15:13

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Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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-----Original Message-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 13, 2018 7:32 AM
To: Kim Marshall
Subject: Re: KPMG and Stikeman opinions

Need it and time to review before we send you our memo.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Kim Marshall
Sent: Monday, February 12, 2018 8:14 PM
To: Veinot, Cindy (TBS)
Subject: Re: KPMG and Stikeman opinions

This week - ok?

Sent from my iPad

On Feb 12, 2018, at 6:56 PM, Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

Hi Kim - do you have an ETA on these?

Thanks,

Cindy
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RE_ Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

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Pw: snowplow

From: Cox, Hilary (ENERGY)
Sent: April 3, 2017 3:26 PM
To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); R

RE_ Materials for Review draft OFHP legislation .rtf

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To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
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Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

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

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

RE_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:02:11

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About 12;10 yes, send me call in number

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adel

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To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 10:01 AM
To: Kim Marshall; Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Ok – any chance you could dial into the meeting at noon?

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: October 25, 2017 10:00 AM
To: Veinot, Cindy (TBS); Kandeepan, Ken (OFA)

Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Sorry. I am in Mississauga til 12 on a meeting I can't move. Follow up afterwards?

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

Hi Ken – I was speaking to Michael Puskaric this morning and in the course of our conversation, I offered to provide them with a briefing on Fair Hydro. Given we are meeting with them next Monday, we thought we could tack it on to the end of the meeting on Financial Instruments. Do you think the FI discussion will take 2 hours?

Kim – I would love to have you there as well for the Fair Hydro portion of the

meeting. Are you available next Monday – from 11:30 to 12:30 to be at CPA Canada (Wellington and Blue Jays way). Our meeting with them on financial instruments is scheduled from 10-12, although I'm hoping we might be able to work through that discussion in 1.5 hours.

Thanks all,

Cindy

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To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
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About 12;10 yes, send me call in number

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CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:00:01

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Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (41

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From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:00:01

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Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

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Thanks all,

Cindy

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Sorry. I am in Mississauga til 12 on a meeting I can’t move. Follow up afterwards?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (41

RE_ Memo Outline.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Memo Outline
Date: Thursday, May 25, 2017 19:01:09
Attachment 1: image001.gif
Attachment 2: Memo Outline V1np_cv.docx

Hi all,

I've added a few more comments to consider.

Thanks,

Cindy

From: Petsche, Nadine (TBS)
Sent: May 24, 2017 8:51 PM
To: Lee Anne Probert
Cc: Suzie Gignac; Blake Langill; Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: RE: Memo Outline

Hi Lee Anne.

Sorry for the delay in getting back to you. My suggestions and comments are noted in the attached. I haven't had a chance to confer with Cindy, so hoping that she'll provide additional feedback to this version, or on your original version by tomorrow. Please let me know if you would like to discuss.

Nadine

From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: May-23-17 8:33 AM
To: Petsche, Nadine (TBS); Veinot, Cindy (TBS)

Cc: Suzie Gignac; Blake Langill
Subject: Memo Outline

Nadine/Cindy,

Attached is a memo outline. Please let me know your thoughts. If you're okay with it, I'll start populating.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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Memo Outline V1np_cv.pdf

Introduction

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

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

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

Objective

Assess the impact of the FEP on the financial statements of the GRE.

Basis of Accounting

GRE – PSAS

OGOs – line-by-line consolidation – PSAS

GBEs – modified equity accounting – IFRS

Analysis (in general, IESO first, then standalone trust, then trust in GRE)

IESO is OGO, so impact on IESO will flow through to GRE

Describe role of IESO - market settlement mechanism

Describe initial impact of FEP on IESO – creates funding shortfall (for costs already incurred on energy already consumed by ratepayers)

IESO has concluded it can recognize the shortfall as a RRA (ref to GAAP hierarchy – relevance of US GAAP)

Describe general concept of RRA

IESO is an OGO – must follow PSAS in GRE

Discuss pros and cons of RRA recognition under PSAS

Show comparison of IESO JEs under both scenarios (RRA vs. no RRA)

I think we should include in this section some commentary on the fact that the Province's statements are currently impacted by RRA – through OPG and H1. Using RRA in IESO is not introducing a new concept into the financial statements of the Province if the substance of the RRA in IESO is similar to the substance of the RRAs in the two GBEs. One question to consider is whether there is substance to using a different accounting treatment in a commercial entity vs. a non-commercial entity. If OPG took on the

role of settling the market, should we get a different answer (e.g. could have structured in a different way)

Discuss need for funding of shortfall and proposed plan (sale of right to trust)

IESO has concluded that details of transaction would support sale treatment.

Discuss pros and cons of sale treatment

Assuming sale treatment, show comparison of IESO JEs under both scenarios (RRA vs. no RRA)

Impact of trust on GRE will depend on two things: (i) who controls the trust, and (ii) how transaction is reported in trust.

Assume, to start, that trust will apply IFRS (for province's CFS, OPG and H1 will be reflected on an IFRS basis, even though both entities will continue to report on a US GAAP basis)

OPG has concluded that trust will recognize intangible asset as a result of the purchase transaction.

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CC: 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Memo Outline
Date: Thursday, May 25, 2017 19:01:09
Attachment 1: image001.gif
Attachment 2: Memo Outline V1np_cv.docx

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From: Petsche, Nadine (TBS)
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To: Lee Anne Probert
Cc: Suzie Gignac; Blake Langill; Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: RE: Memo Outline

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Re_ KPMG and Stikeman opinions.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: KPMG and Stikeman opinions
Date: Monday, February 12, 2018 21:14:25

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Sent from my iPad

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CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: Friday, August 25, 2017 08:38:21

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Date: Friday, August 25, 2017 08:38:21

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Noon today? That's a stretch

Sent from my iPad

> On Aug 25, 2017, at 8:31 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> Noon is fine
>
> Sent from my BlackBerry 10 smartpho

Re_ Meeting re Provincial Protection & Assurances Agreement.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting re Provincial Protection & Assurances Agreement
Date: Tuesday, July 11, 2017 18:21:36
Attachment 1: ATT82855 1.jpg
Attachment 2: image5379bf.JPG

Hi Cindy, I just updated the invite with this information -- we're at 79 Wellington Street West, 33rd floor. Let me know if you need me to forward you the invite. Thanks,

Sent from my iPhone

On Jul 11, 2017, at 5:40 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

Hi Rima – could you please send the address for Tory's – thanks,

Cindy Veinot
Provincial Controller and Assistant Deputy Minister, Office of the Provincial Controller
Treasury Board Secretariat
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario M7A 1Y7

T: 416-325-8017
E: cindy.veinot@ontario.ca<mailto:cindy.veinot@ontario.ca>

[cid:image001.png@01D20DD0.23D9CA40]<ATT82855 1.jpg>

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com<http://www.torys.com>
[Torys LLP]<http://www.torys.com>

-----Original Appointment-----
From: Montgomery, Kaitlin (MOF) On Behalf Of Ramchandani, Rima
Sent: July 11, 2017 10:47 AM
To: Ramchandani, Rima
Subject: FW: Meeting re Provincial Protection & Assurances Agreement
When: July 12, 2017 12:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys Boardroom 33S3 & S4

-----Original Appointment-----
From: rpalikrousis@torys.com<mailto:rpalikrousis@torys.com> [mailto:rpalikrousis@torys.com] On Behalf Of Ramchandani, Rima
Sent: July 10, 2017 3:35 PM
To: Ramchandani, Rima; Mansoori, Nina; 'leslie.wong@opg.com<mailto:leslie.wong@opg.com>'; 'john.s.lee@opg.com<mailto:john.s.lee@opg.com>'; 'ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>';

'tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>';
'jenny.jorda@opg.com<mailto:jenny.jorda@opg.com>'; Montgomery, Kaitlin (MOF); Nelms, Scott (MOF);
'RSebastiano@osler.com<mailto:RSebastiano@osler.com>';
'PMilligan@osler.com<mailto:PMilligan@osler.com>';
'Katrina.Niehaus@gs.com<mailto:Katrina.Niehaus@gs.com>';
'MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>';
'aobrian@hunton.com<mailto:aobrian@hunton.com>'
Cc: Palikrousis, Rita
Subject: Meeting re Provincial Protection & Assurances Agreement
When: July 12, 2017 12:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys Boardroom 33S3 & S4

Good Afternoon, Please feel free to forward this invitation to others from your organization that will be attending. Thank you.

Dial-in: 1.800.600.0998
Access Code: 8657666#

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<ATT82855 1.jpg>

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ATT82855 1.pdf

TBS

image5379bf.pdf

TORYS
LLP

Re_ Meeting tomorrow.rtf

From: Hume, Steen (ENERGY) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Ouellette, Lois A [louellette@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Meeting tomorrow
Date: Wednesday, February 01, 2017 20:19:38
Attachment 1: @

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View the original item

Thanks Cindy. Let's discuss tomorrow.

Steen

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Veinot, Cindy (TBS)
Sent: Wednesday, February 1, 2017 7:01 PM
To: Hume,
Attachments:
image001.png (6 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201703078910032~201702020019390000~Z~C01494C73B145ADB0037F3FAD2D22C91&AttachmentId=1image001.png

Re_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:49:34

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Better, Sarah can connect with georgia, thx

Sent from my iPad

On Oct 25, 2017, at 10:09 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> See subsequent message from Ken – meeting

Re_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:49:34

Better, Sarah can connect with georgia, thx

Sent from my iPad

On Oct 25, 2017, at 10:09 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> See subsequent message from Ken – meeting to be rescheduled – stay tuned!
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** October 25, 2017 10:02 AM
> **To:** Veinot, Cindy (TBS); Kandeepan, Ken (OFA)
> **Cc:** Hosick, Sarah (TBS)
> **Subject:** RE: Meeting with PSAB on Oct 30
>
> About 12;10 yes, send me call in number
>
> **Kimberly Marshall** | VP, Corporate Services & CFO
>
> Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
>
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
>
> Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
>
> ***Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.***
>
> Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn:

saveONenergy

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 10:01 AM
To: Kim Marshall; Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Ok – any chance you could dial into the meeting at noon?

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: October 25, 2017 10:00 AM
To: Veinot, Cindy (TBS); Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Sorry. I am in Mississauga til 12 on a meeting I can't move. Follow up afterwards?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn:

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

Hi Ken – I was speaking to Michael Puskaric this morning and in the course of our conversation, I offered to provide them with a briefing on Fair Hydro. Given we are meeting with them next Monday, we thought we could tack it on to the end of the meeting on Financial Instruments. Do you think the FI discussion will take 2 hours?

Kim – I would love to have you there as well for the Fair Hydro portion of the meeting. Are you available next Monday – from 11:30 to 12:30 to be at CPA Canada (Wellington and Blue Jays way). Our meeting with them on financial instruments is scheduled from 10-12, although I'm hoping we might be able to work through that discussion in 1.5 hours.

Thanks all,

Cindy

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error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Re_ Monday availability _.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Picard, Michel [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Georgia Ritchie-Wust [georgia.ritchie-wust@ieso.ca]
Subject: Re: Monday availability ?
Date: Monday, November 20, 2017 10:49:07

Georgia and jack can you pls arrange even if at end of day. Thx

Sent from my iPhone

On Nov 20, 2017, at 9:47 AM, Picard, Michel <mpicard@kpmg.ca> wrote:

> anytime
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** Friday, November 17, 2017 5:20 PM
> **To:** Cindy Veinot <Cindy.Veinot@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>
> **Subject:** Monday availability ?
>
> For call to prep for Tuesday Cpa meeting.
>
> Sent from my iPhone
>
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Re_ Move to 11am_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Move to 11am?
Date: Friday, August 25, 2017 10:11:35

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View the original item

Just call my cell 4165457202

Sent from my iPad

> On Aug 25, 2017, at 10:09 AM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:
>
> Sure, (cindy is in a meeting until 11, so it may be a f

RE_ Ontario Fair Hydro Plan.rtf

From: Alan Hibben [alan.hibben@rogers.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; "MCAULEY Tyler -LAWDIV" [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Nevison, Gary' [Gary.Nevison@tdsecurities.com]; 'Thom, Trevor' [Trevor.Thom@tdsecurities.com]; 'Akman, Steven' [Steven.Akman@tdsecurities.com]; 'Thompson, Susan' [Susan.Thompson@tdsecurities.com]; 'Manii, David' [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 11:33:55

I have a couple of comments. I apologize in advance that I have not been able to keep up with al the drafting and other decisions, so to the extent that these elements have already been agreed by OPG, I apologize.

1. "Clarification with respect to regulations" should refer to "any proposal to make ***or amend*** a regulation"

2. "Average baseline rate" is this calculated **before** the announced HST rebate?

3. "Fair Adjustment May 1, 2018 to April 30, 2022" – would like to make sure that the regulations allow for a pass-through of interest on investment assets in this time period.

4. "Principles of fair adjustment" why does this refer to the time value of money rather than funding costs of the investment assets?

5. "Fair Allocation Plan" this is still in the document, but now without any use or definition . Is this a holdover? Would be good to get rid of the concept completely

6. "Estimated funding amount" should include original issue discount (if any)

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]

Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April

28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com);

Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: @

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View the original item

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon’s meeting. Below is a list of

Attachments:

image5ddddd.JPG (5 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705175053577~201704171440070000~Z~D113AFC9FD908187C8FFB8C82AE31481&AttachmentId=1image5ddddd.JPG

RE_ Ontario Fair Hydro Plan.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: Feldman, Michael [mfeldman@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:53:33
Attachment 1: imagec5fcbe.JPG
Attachment 2: Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).DOCX
Attachment 3: Blackline - Fair Hydro Plan Act (Torys comments).pdf

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All,

Further to Michael's email, please find attached a mark-up of the draft Bill containing OPG and Torys' consolidated comments. Please note that this draft remains subject to the continuing review of OPG.

Thanks,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Feldman, Michael
Sent: April-26-17 5:58 PM
To: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>;

mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>; Saulnier, Brett <bsaulnier@torys.com>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

Major Issues

1. It is critically important to have a definition of "transfer" that is broad enough. We had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine

these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister’s rights will not extend to OPG’s rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG’s issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing

Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for "Standing and Remedies" of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

<u>Minor Points</u>

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of "refinancing" doesn't work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

Michael K. Feldman

P. 416.865.7513

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-26-17 12:39 PM

To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be

proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act,

2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the amount of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998* **[NTD: As payments made under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph]**, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 25xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." or "OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation, as may be further prescribed; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") **[NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment asset, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the

Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive, on a monthly basis an invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different

proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty

(a) each clean energy adjustment is considered to be consistent with the fair allocation amount; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was in conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the sum of the estimated finance amount and the other cost amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced by electricity vendors to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The Minister shall calculate a fair allocation amount in respect of each reference period by the date that is **[20]** business days after the day this Act receives Royal Assent.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

ii. The expected number of specified consumers in respect of each reference period.

iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or the Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

Provision of updates to Minister

(4) The Financial Services Manager shall provide the Minister written notification of any updates to the calculation of the fair allocation amount made pursuant to subsection (1.3).

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment asset in accordance with this Act or for purposes of refinancing a funding obligation.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(2) The Financial Services Manager shall cause financing entities to incur funding obligations only in material conformity with the applicable Financing Plan.

Same

(3) For greater certainty, subsection 17xx (4) applies despite the failure of the Financial Services Manager to comply with subsection (2).

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) Each transfer of a regulatory asset or a portion of it either creates or increases the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment interest owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, Ontario Power Generation Inc. or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset;

(B) transferring the regulatory asset for consideration; and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity); and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity).

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and any regulations made thereunder. **[NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Blackline - Fair Hydro Plan Act (Torys comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the ~~value~~**amount** of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, ~~1998,~~**1998** [NTD: As payments made*

under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph], and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined ~~in~~ under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~**25**xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." **or "OPG"** means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means~~, subject to the regulations,~~ **the incurrence of debt in connection with** a redemption, repayment or repurchase of a funding obligation**, as may be further prescribed**; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" ~~means [TBD]; ("French")~~**includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of**

IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") [NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~and reflect the fair allocation~~; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment ~~interest~~**asset**, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive**, on** a monthly **basis an** invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less

than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~**its** billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice **from an electricity vendor** that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty~~, subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment ~~was determined in a manner that was inconsistent with this Act~~**is considered to be consistent with the fair allocation amount**; and

(b) ~~whether the amount payable in respect of the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was ~~not~~ in ~~material~~ conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding **the sum of** the estimated finance amount **and the other cost amount** in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced **by electricity vendors** to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. ~~(2)~~ **1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.** The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from

electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager**, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~**by the date that is [20] business days after the day this Act receives Royal Assent**.

Certification

(1.2) The Minister shall certify to the Financial Services Manager **the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.**

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~**1.5**) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, **the Minister or** the Financial Services Manager**, as applicable,** shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The **Minister or the** Financial Services Manager**, as applicable,** shall calculate a fair allocation amount in accordance with such methods as the **Minister or the** Financial Services Manager**, as applicable,** considers appropriate, having regard to the requirements of this Act.

~~Notification~~**Provision of updates to Minister**

(4) The Financial Services Manager shall ~~notify~~**provide** the Minister ~~of the methods used to calculate~~**written notification of any updates to the calculation of** the fair allocation amount ~~and any changes to those methods~~**made pursuant to subsection (1.3)**.

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation **by the Minister** takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~**by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister**.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment ~~interest~~**asset** in accordance with this Act **or for purposes of refinancing a funding obligation**.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period~~. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference

period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

~~**Confidentiality**~~

~~(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:~~

~~1. The Financing Plan.~~

~~2. Reports referred to in subsection (3.1).~~

~~3. Any other document that would reveal information contained in the Financing Plan or the reports.~~

Amendments to plan

(~~6~~5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(~~7~~6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. **(1)** In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(~~1~~2) The Financial Services Manager shall **cause financing entities to** incur funding obligations **only** in material conformity with the applicable Financing Plan.

Same

(~~2~~3) For greater certainty, subsection 17xx (~~5~~4) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~2).

~~**Financing entities**~~

~~(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.~~

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in~~, or any obligations in respect of,~~ the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment ~~asset~~**interest** owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) ~~The first~~**Each** transfer of ~~the~~**a** regulatory asset or a portion of it **either** creates **or increases** the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover ~~amounts in respect of~~ the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for ~~amounts in respect of~~ the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor **and IESO** to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment ~~of amounts in respect~~ of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the

investment ~~asset~~**interest** owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject

to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~ccount~~**account** of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to

collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, ~~OPG~~**Ontario Power Generation Inc.** or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998
[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(~~iv~~**A**) incurring liabilities in relation to the regulatory asset**;**

(~~v~~**B**) transferring the regulatory asset for consideration; **and**

(~~vi~~**C**) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~**2017.**

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities **and performing other services on behalf of financing entities**, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a ~~special purpose~~ financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries **(other than, for greater certainty, such a subsidiary that is that financing entity)**; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity **(other than, for greater certainty, such a subsidiary that is that financing entity)**.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, ~~2017.~~**2017*** **and any regulations made thereunder. [NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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Deleted cell	
Moved cell	
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	Count
Insertions	117
Deletions	68
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	189

RE_ Ontario Fair Hydro Plan.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: Feldman, Michael [mfeldman@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:53:33
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All,

Further to Michael’s email, please find attached a mark-up of the draft Bill containing OPG and Torys’ consolidated comments. Please note that this draft remains subject to the continuing

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From: Saulnier, Brett [bsaulnier@torys.com]
To: Feldman, Michael [mfeldman@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
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From: Sebastiano, Rocco [RSebastiano@osler.com]
To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 14:39:45
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Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com;

Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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Toronto

M7A 2E7

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

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In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then

regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an

asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

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Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
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RE_ Ontario Fair Hydro Plan.rtf

From: Sebastiano, Rocco [RSebastiano@osler.com]
To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 14:39:45
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Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in

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To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
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Attachment 1: image001.jpg

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com;

Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then

regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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RE_ Ontario Fair Hydro Plan.rtf

From: Sebastiano, Rocco [RSebastiano@osler.com]
To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 14:39:45
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Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in

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RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
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Please find attached Osler’s most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of po

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Compare - Fair Hydro Act - Osler Comments on v 4.pdf (247 KB)
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Fair Hydro Act - Osler Comments on v 4.docx (146 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705306175385~201704262236320000~Z~D0A1F41FA6FEA056F82C99A9F4CDCF51&AttachmentId=5Fair Hydro Act - Osler Comments on v 4.docx

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From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Compare - Fair Hydro Act - Osler Comments on v 4.pdf
Attachment 5: Fair Hydro Act - Osler Comments on v 4.docx

Please find attached Osler's most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of points from our mark-up on Sunday did not make it into this draft of the legislation and in the interests of time we have not marked them back up, but they remain outstanding.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson,

Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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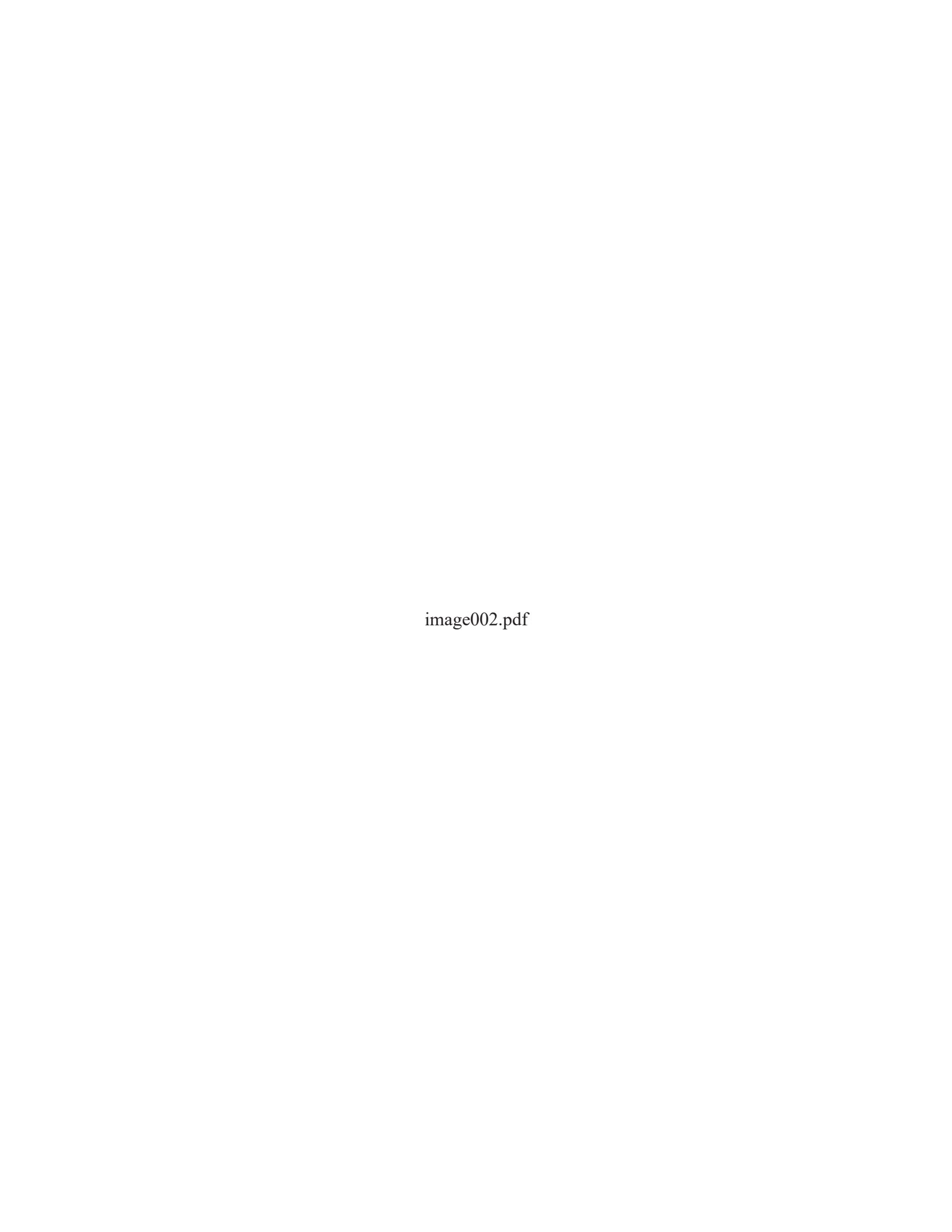
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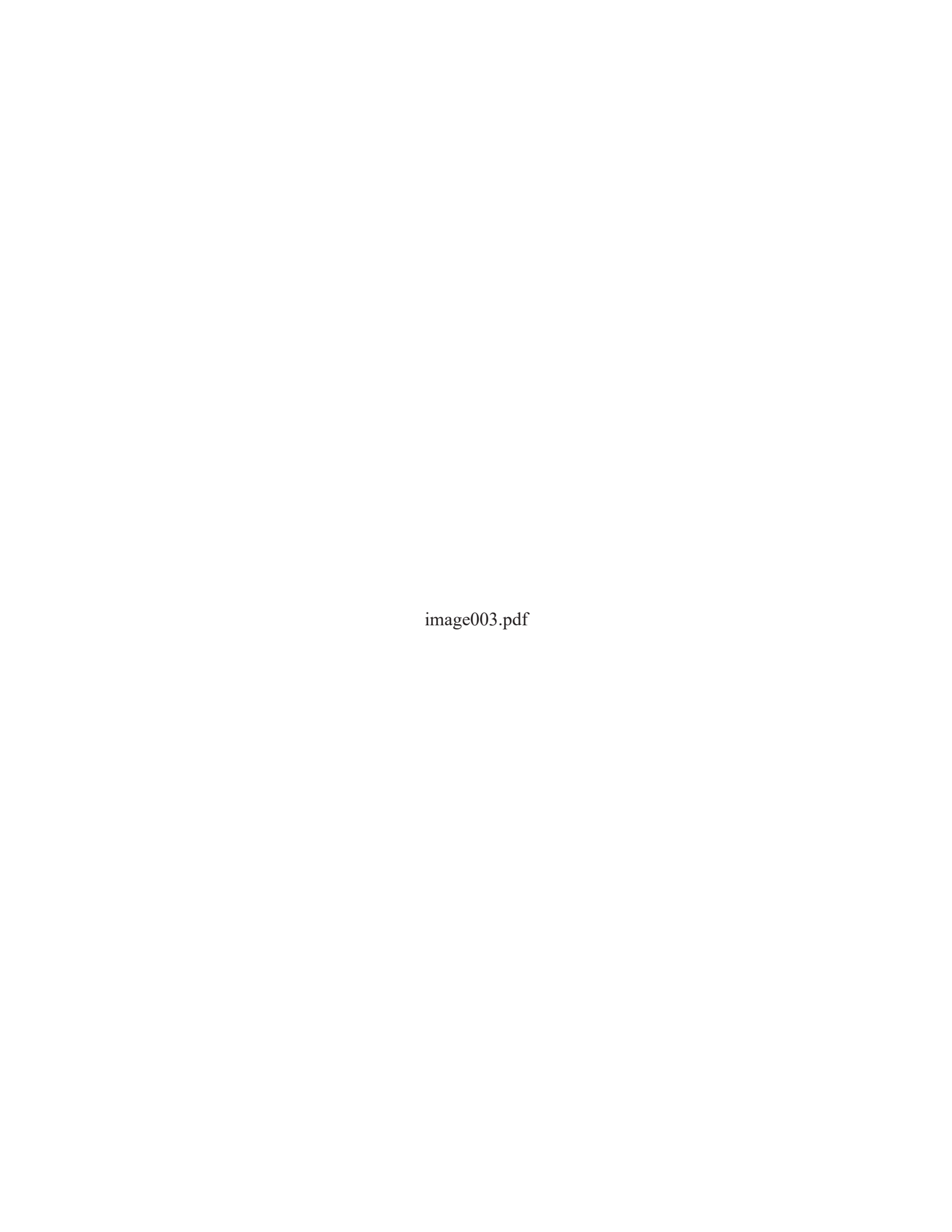
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2017
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DIVERSITY EMPLOYERS

Compare - Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable]** **[NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act. and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during ~~a~~each reference period will reasonably align with the fair allocation amount determined in respect of ~~the~~such reference period under this Part as ~~of~~estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not ~~be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy**

adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the

balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, ~~the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner ~~of the regulatory asset~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

~~**200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

~~**(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d)amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable][NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act, and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during each reference period will reasonably align with the fair allocation amount determined in respect of such reference period under this Part as estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]**

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties

arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Compare - Fair Hydro Act - Osler Comments on v 4.pdf
Attachment 5: Fair Hydro Act - Osler Comments on v 4.docx

Please find attached Osler's most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of points from our mark-up on Sunday did not make it into this draft of the legislation and in the interests of time we have not marked them back up, but they remain outstanding.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson,

Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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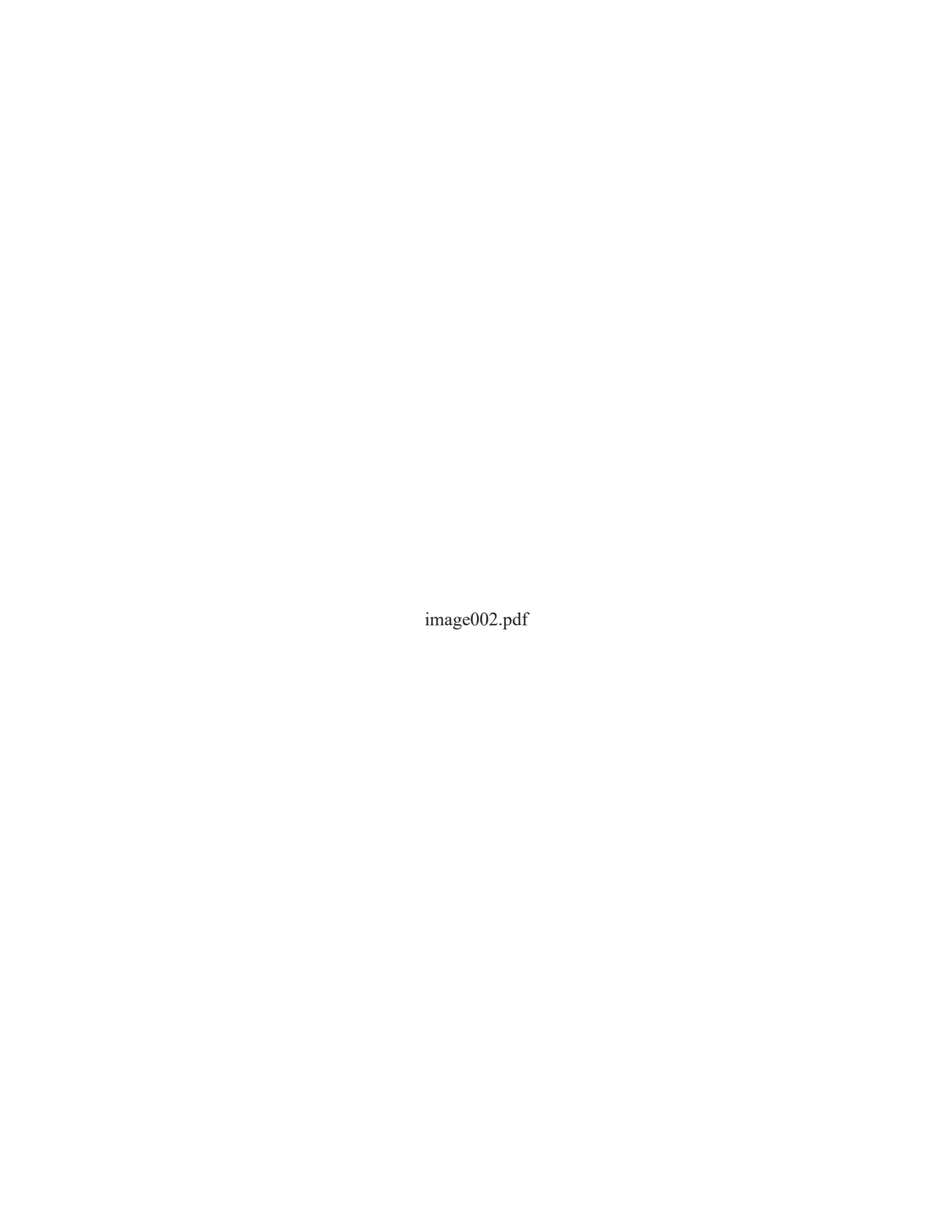
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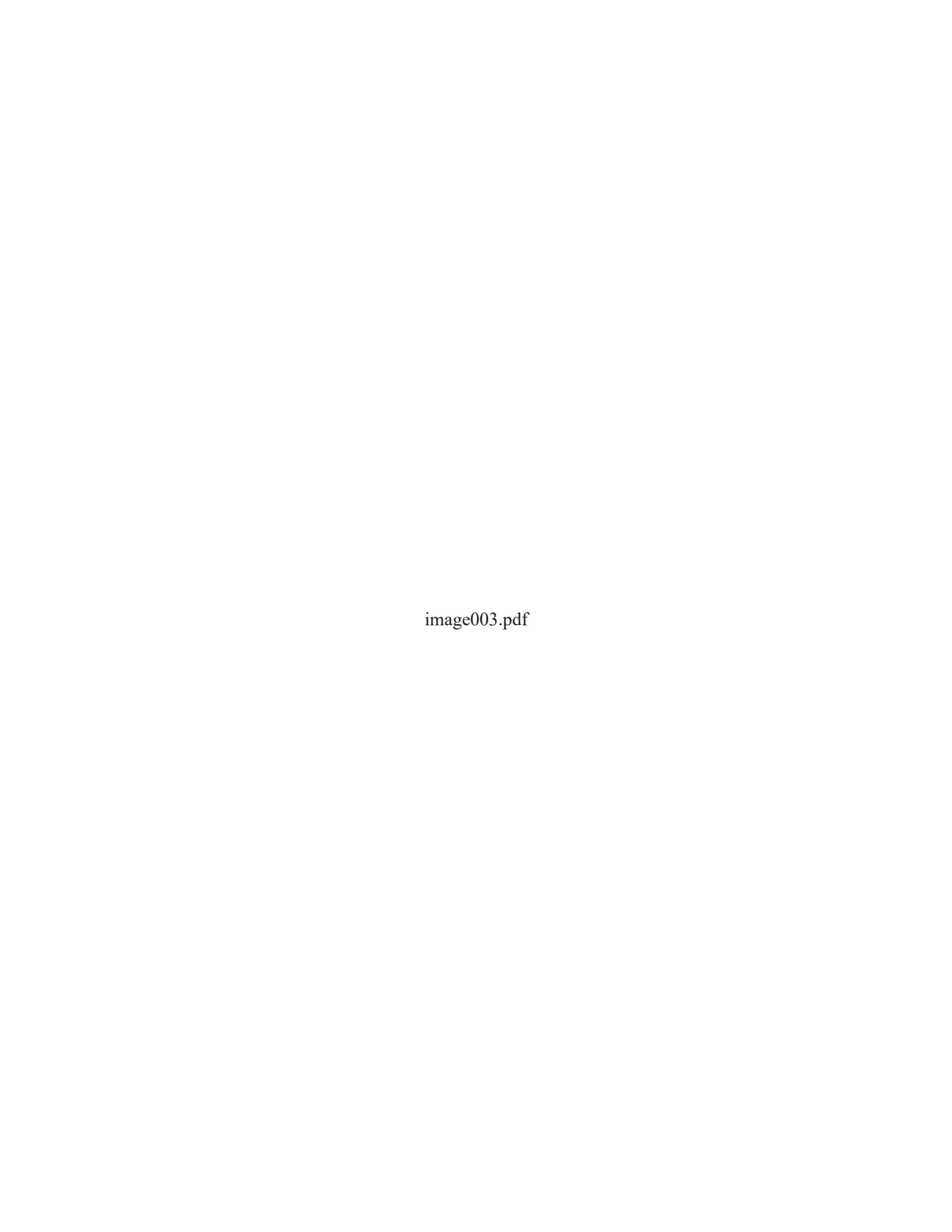
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2017
CANADA'S BEST
DIVERSITY EMPLOYERS

Compare - Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable]** **[NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act. and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during ~~a~~each reference period will reasonably align with the fair allocation amount determined in respect of ~~the~~such reference period under this Part as ~~of~~estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not ~~be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy**

adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the

balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, ~~the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner ~~of the regulatory asset~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

~~**200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

~~**(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d)amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable][NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act, and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during each reference period will reasonably align with the fair allocation amount determined in respect of such reference period under this Part as estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]**

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties

arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
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Please find attached Osler’s most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of po

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AttachmentId=5Fair Hydro Act - Osler Comments on v 4.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
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Please find enclosed Osler’s comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of

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RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
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Attachment 2: image003.gif
Attachment 3: image004.jpg
Attachment 4: image005.jpg
Attachment 5: Compare - Fair Hydro Act - Osler comments.pdf
Attachment 6: Fair Hydro Act (April 23 2017) [Osler comments].docx

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Please find enclosed Osler's comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>;

Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton'

<PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital

Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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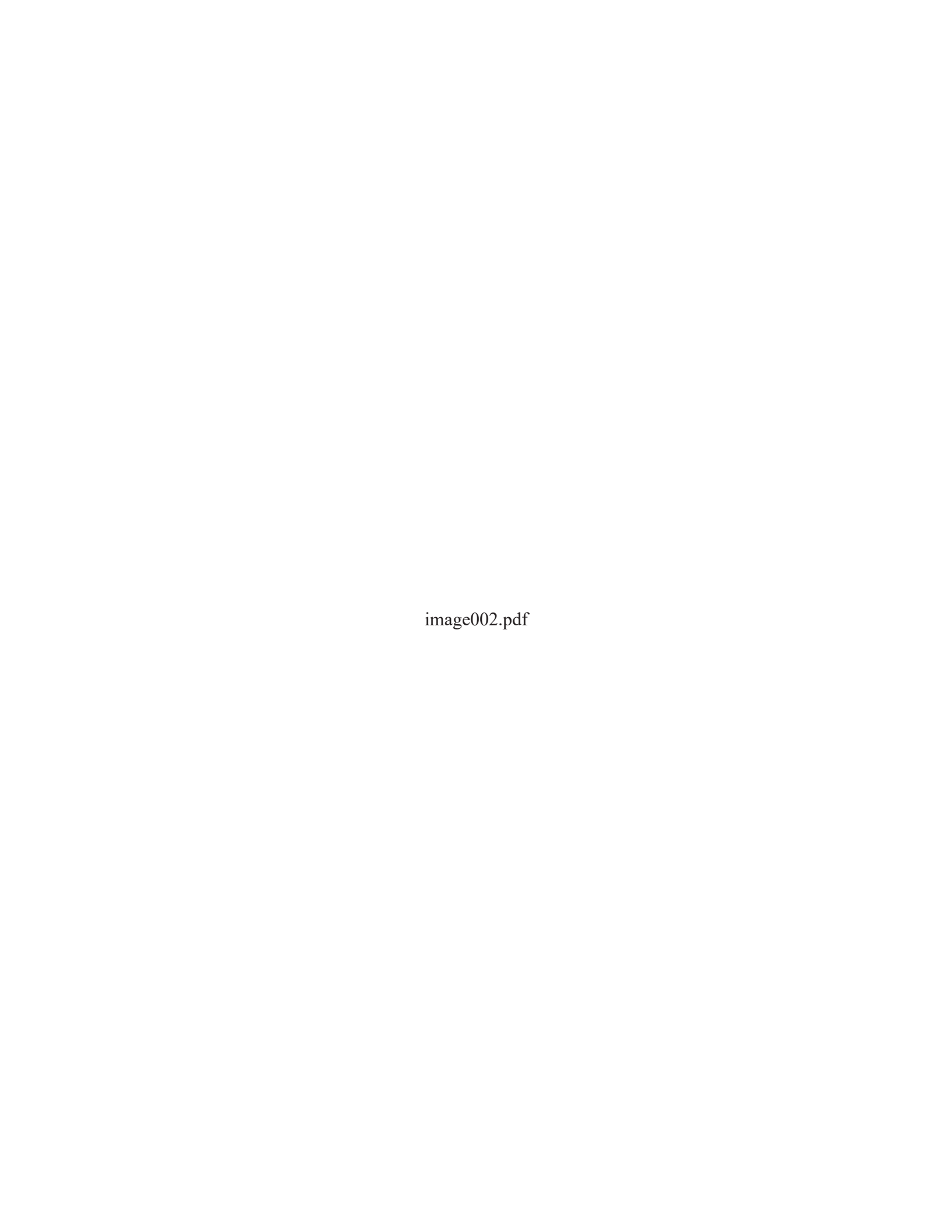
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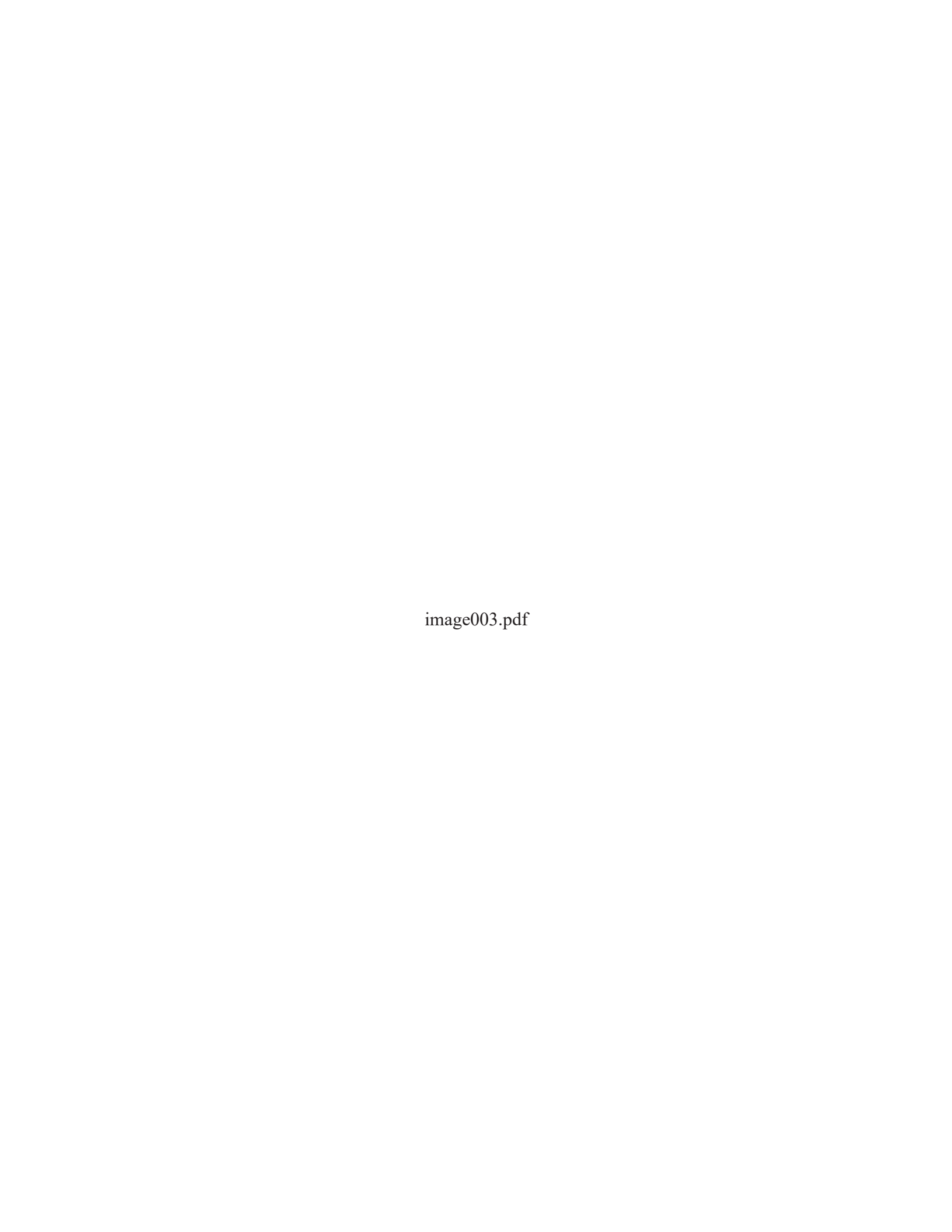
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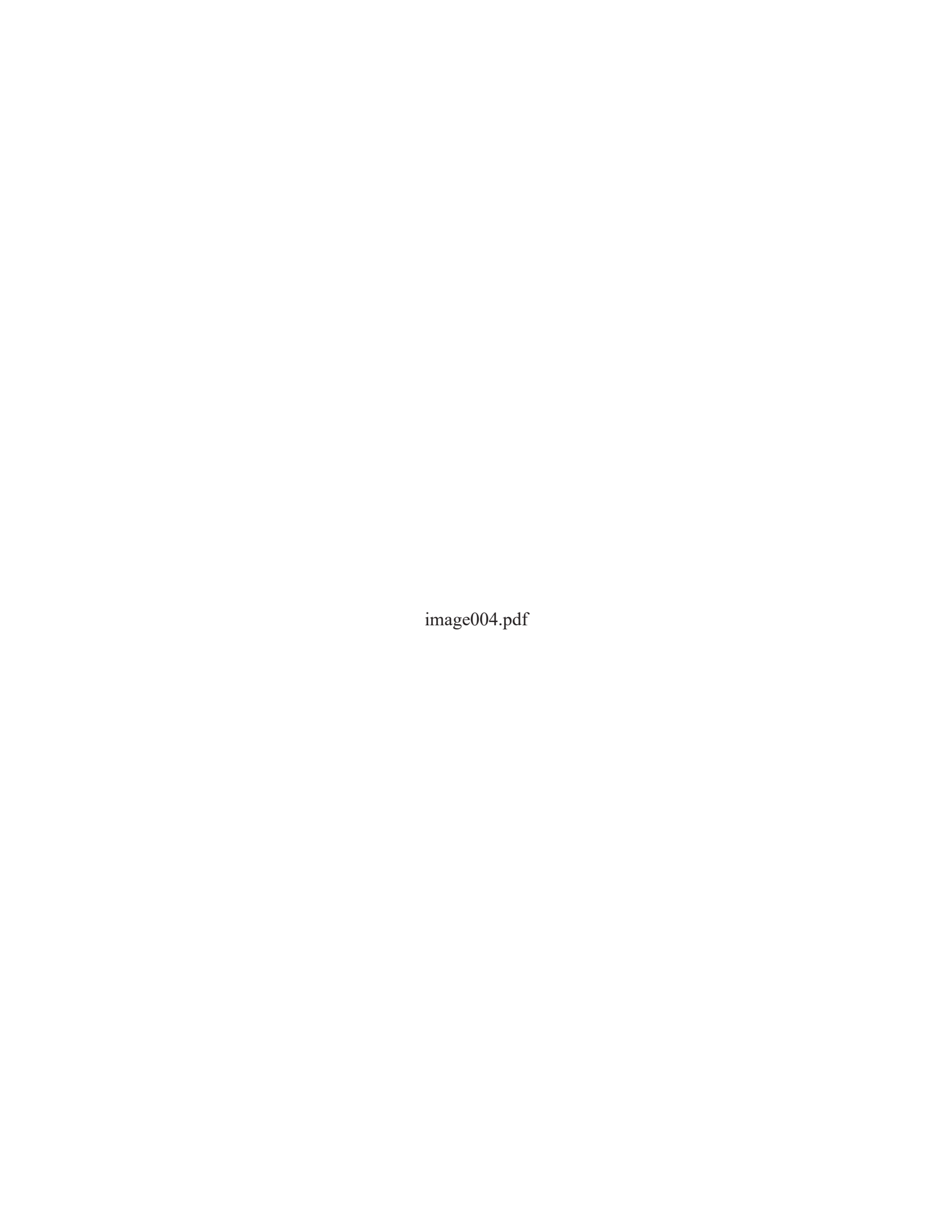
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~~**Version 3**~~
April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative[**, including as a result of past, present and expected future incurrences of clean energy costs**][**[NTD: What does this mean?]**]; ("French")

"clean energy costs" means, in respect of a reference period, the ~~value~~amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x; ("French"). **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a ~~reference period~~calendar month, the amount determined under section 20xx for the ~~reference period~~calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be ~~set out in the Fair Allocation Plan~~prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a ~~named~~specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the ~~p~~provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation~~; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment ~~over other debts; or~~in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements ~~for compensation~~

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is ~~25~~**[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

~~(2) Subsection (1) does not apply to the extent that there is a calculation error~~**[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the ~~electricity vendor.~~OEB.]**

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the ~~estimated~~actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors ~~[~~in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, ~~1998]~~1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those a~~cc~~mounts:

1. Amounts described in subsection 12 (~~4~~5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~.~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer ~~for the consumer's amount~~ of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers ~~[in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]~~.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~:~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the ~~electricity vendor~~IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the ~~expected~~estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the ~~expected~~estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would ~~become payable during the reference period and~~ result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(~~4~~5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) ~~The Financial Services Manager shall incur funding~~Funding obligations shall be incurred and ~~make~~ transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section ~~[paramountcy of funding obligations]~~17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(~~3~~4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

~~Effect of amendment to Fair Allocation Plan~~Financing Plan compliance

(~~4~~5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize~~authorizing the IESO to~~ do the following~~:

1. ~~Create~~Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation]. **[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in, or any obligations in respect of~~, the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred ~~to~~ a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer ~~of IESO's right to recover the IESO funding shortfall~~, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any ~~amounts that~~and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or ~~an owner of distribution system assets in the Province~~licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way

of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]. [NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds ~~that are deposited in~~collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person ~~who~~, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to**

be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan ~~or in relation to the establishment of the Fair Allocation Plan~~.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

~~**References in marketing materials and offering documents**~~

~~**36xx.** No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.~~

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(~~b~~d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[7] Note - see s. 51 of the Electricity Act, 1998

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to

facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a

subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Fair Hydro Act (April 23 2017) [Osler comments].pdf

April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative**[, including as a result of past, present and expected future incurrences of clean energy costs][NTD: What does this mean?]**; ("French")

"clean energy costs" means, in respect of a reference period, the amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x; ("French") **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a calendar month, the amount determined under section 20xx for the calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is **[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the OEB.]

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 12 (5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) Funding obligations shall be incurred and transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section 17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Financing Plan compliance

(5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to:

1. Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation].**[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) the IESO shall have no further right, title or interest in, or any obligations in respect of the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred to a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and

under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]**. **[NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]**

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged

neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act…

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

[7] Note - see s. 51 of the Electricity Act, 1998

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
Attachment 1: image002.gif
Attachment 2: image003.gif
Attachment 3: image004.jpg
Attachment 4: image005.jpg
Attachment 5: Compare - Fair Hydro Act - Osler comments.pdf
Attachment 6: Fair Hydro Act (April 23 2017) [Osler comments].docx

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Please find enclosed Osler's comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>;

Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton'

<PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital

Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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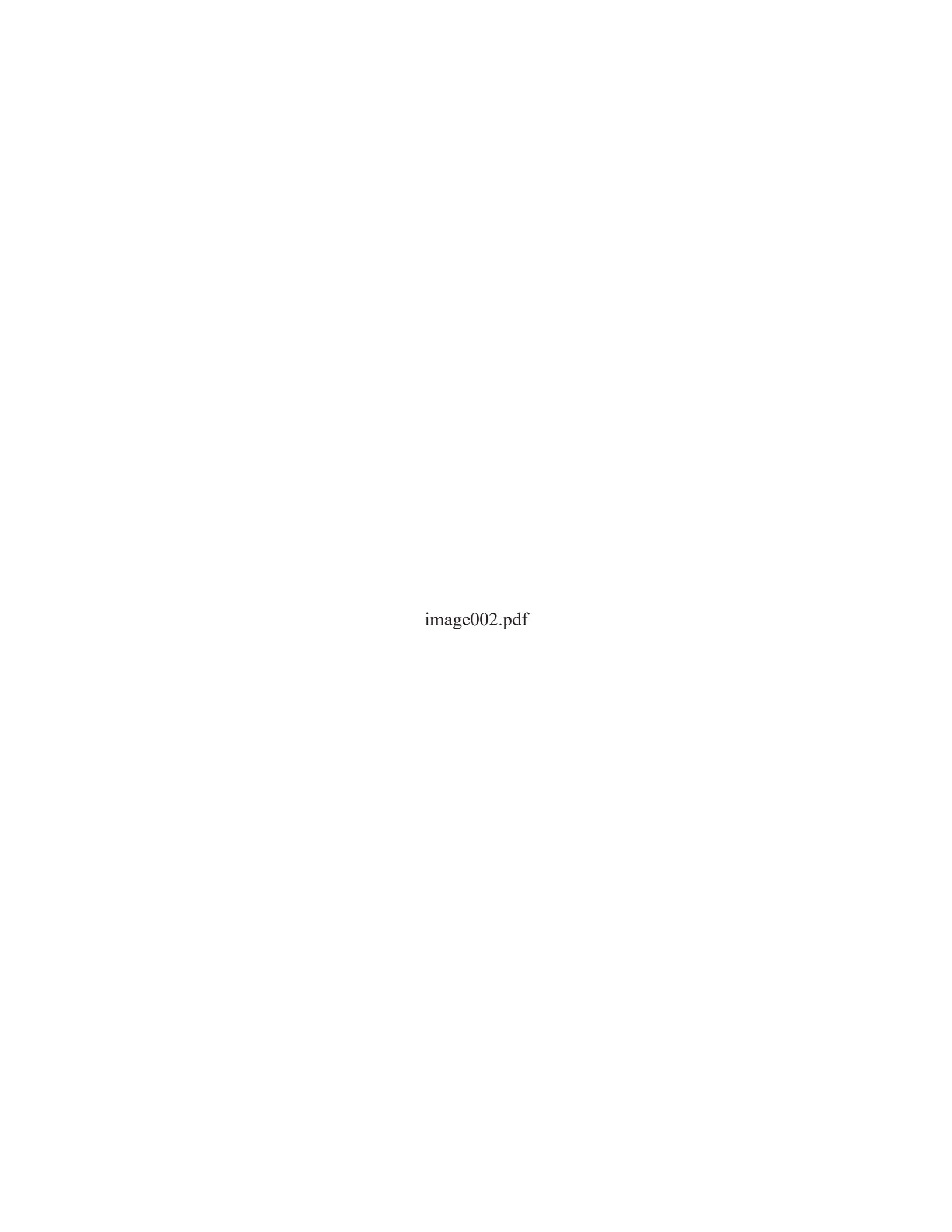
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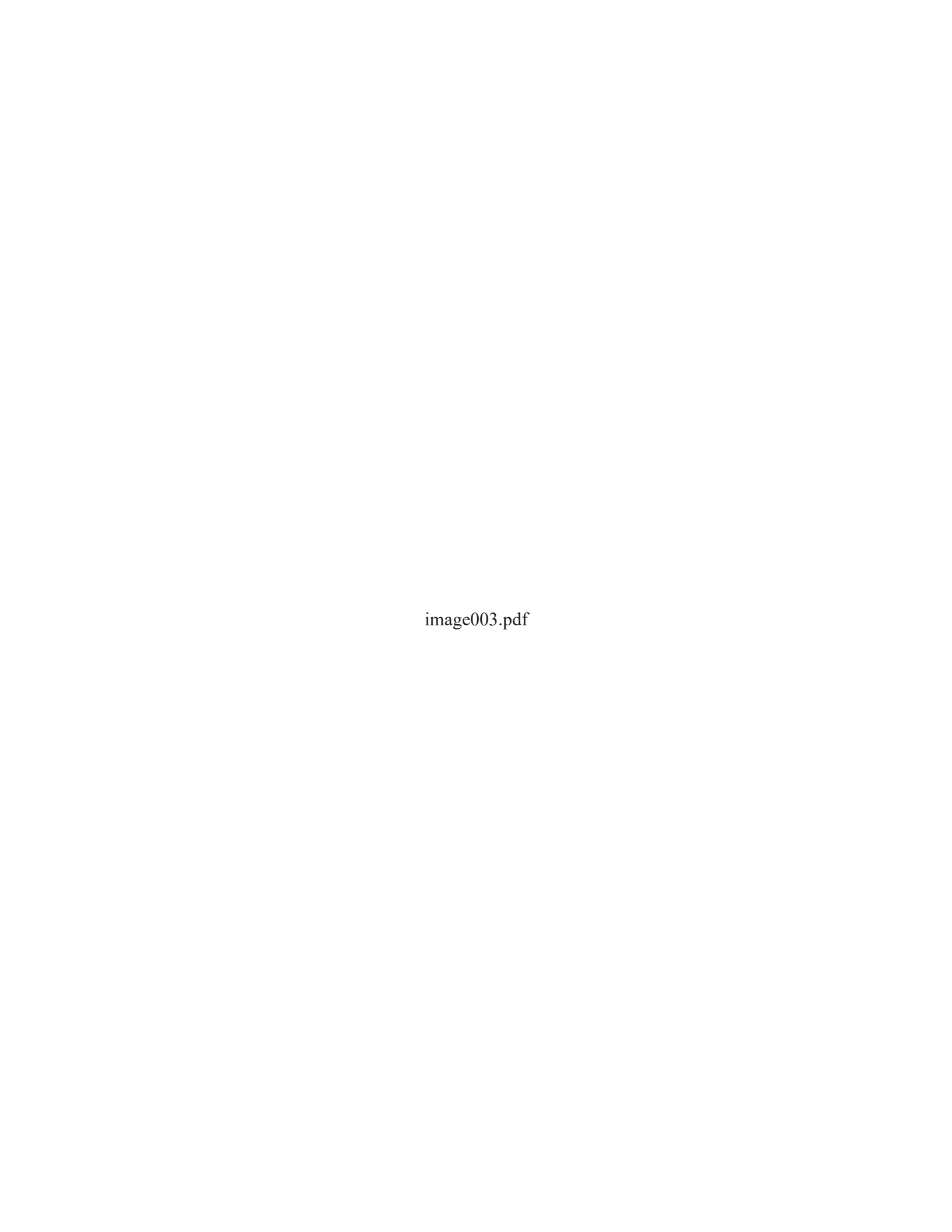
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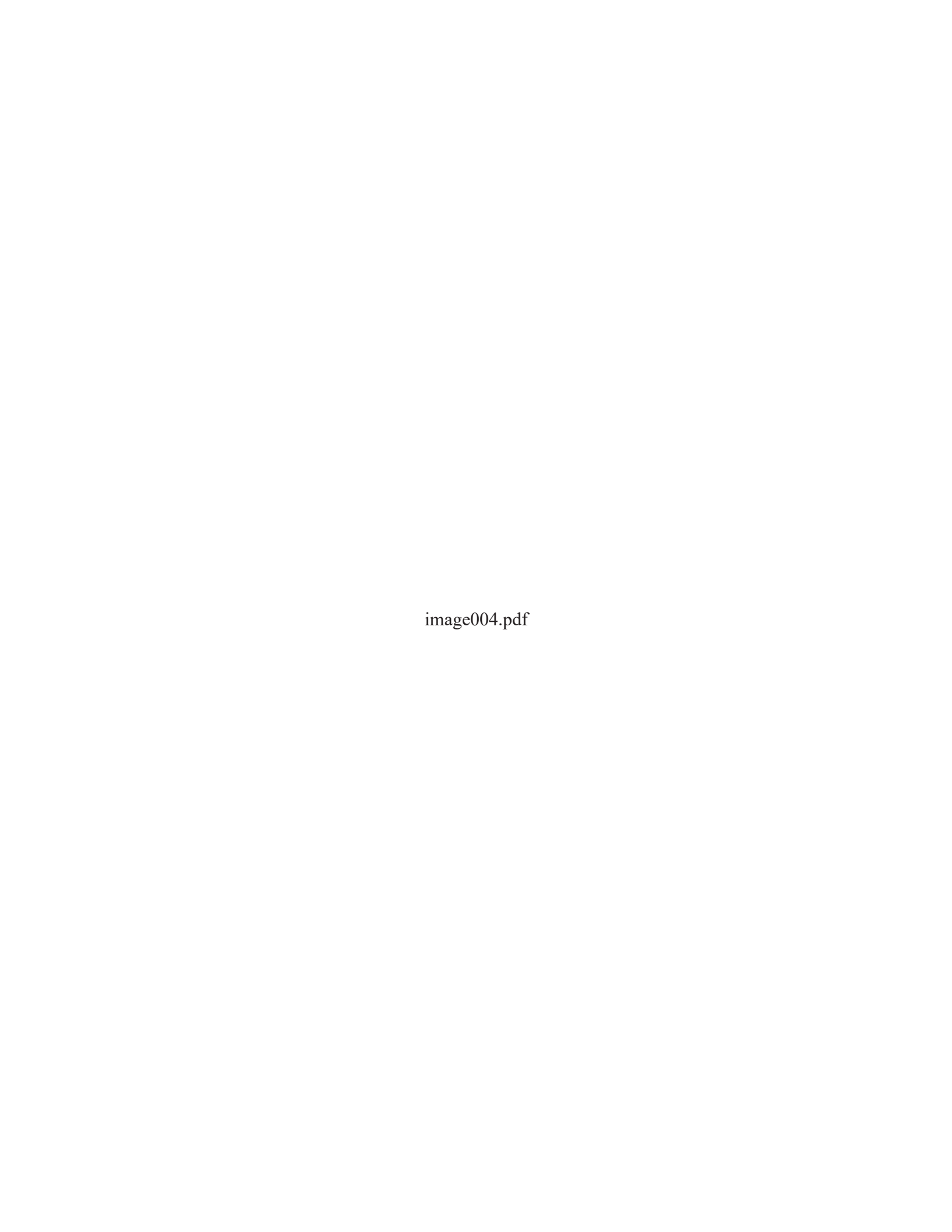
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~~**Version 3**~~
April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative[**, including as a result of past, present and expected future incurrences of clean energy costs**][**[NTD: What does this mean?]**]; ("French")

"clean energy costs" means, in respect of a reference period, the ~~value~~amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x; ("French"). **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a ~~reference period~~calendar month, the amount determined under section 20xx for the ~~reference period~~calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be ~~set out in the Fair Allocation Plan~~prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a ~~named~~specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the ~~p~~provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation~~; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment ~~over other debts; or~~in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements ~~for compensation~~

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is ~~25~~**[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

~~(2) Subsection (1) does not apply to the extent that there is a calculation error~~**[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the ~~electricity vendor.~~OEB.]**

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the ~~estimated~~actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors ~~[~~in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, ~~1998]~~1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those a~~cc~~mounts:

1. Amounts described in subsection 12 (~~4~~5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~.~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer ~~for the consumer's amount~~ of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers ~~[in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]~~.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~:~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the ~~electricity vendor~~IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the ~~expected~~estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the ~~expected~~estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would ~~become payable during the reference period and~~ result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(~~4~~5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) ~~The Financial Services Manager shall incur funding~~Funding obligations shall be incurred and ~~make~~ transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section ~~[paramountcy of funding obligations]~~17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(~~3~~4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

~~Effect of amendment to Fair Allocation Plan~~Financing Plan compliance

(~~4~~5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize~~authorizing the IESO to~~ do the following~~:

1. ~~Create~~Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation]. **[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in, or any obligations in respect of~~, the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred ~~to~~ a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer ~~of IESO's right to recover the IESO funding shortfall~~, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any ~~amounts that~~and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or ~~an owner of distribution system assets in the Province~~licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way

of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]. [NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds ~~that are deposited in~~collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person ~~who~~, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to**

be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan ~~or in relation to the establishment of the Fair Allocation Plan~~.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

~~**References in marketing materials and offering documents**~~

~~**36xx.** No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.~~

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(~~b~~d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[7] Note - see s. 51 of the Electricity Act, 1998

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to

facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a

subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Fair Hydro Act (April 23 2017) [Osler comments].pdf

April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative**[, including as a result of past, present and expected future incurrences of clean energy costs][NTD: What does this mean?]**; ("French")

"clean energy costs" means, in respect of a reference period, the amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x; ("French") **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a calendar month, the amount determined under section 20xx for the calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is **[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the OEB.]

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 12 (5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) Funding obligations shall be incurred and transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section 17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Financing Plan compliance

(5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to:

1. Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation].**[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) the IESO shall have no further right, title or interest in, or any obligations in respect of the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred to a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and

under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]**. **[NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]**

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged

neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act…

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

[7] Note - see s. 51 of the Electricity Act, 1998

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Compare - Fair Hydro Act - Osler Comments on v 4.pdf
Attachment 5: Fair Hydro Act - Osler Comments on v 4.docx

Please find attached Osler's most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of points from our mark-up on Sunday did not make it into this draft of the legislation and in the interests of time we have not marked them back up, but they remain outstanding.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson,

Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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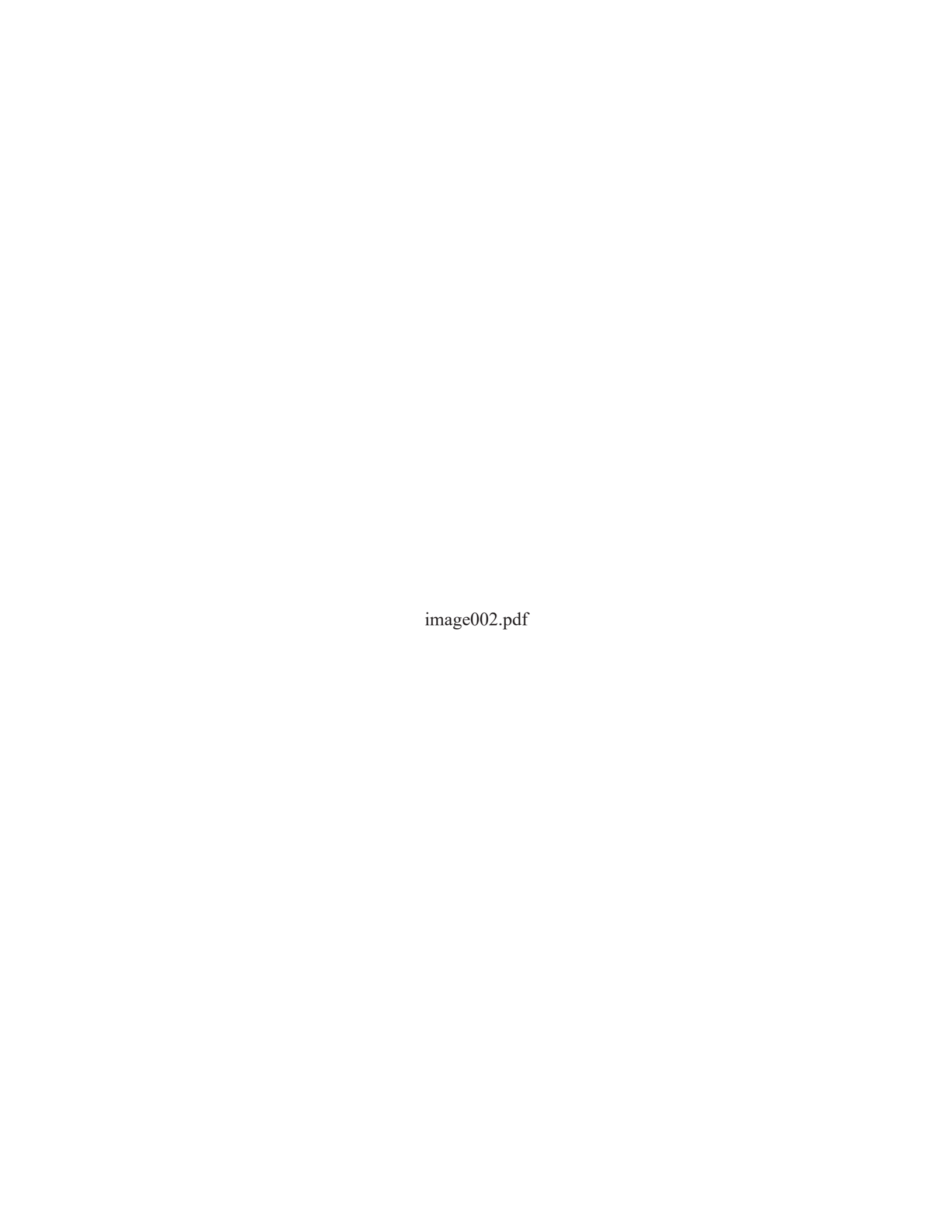
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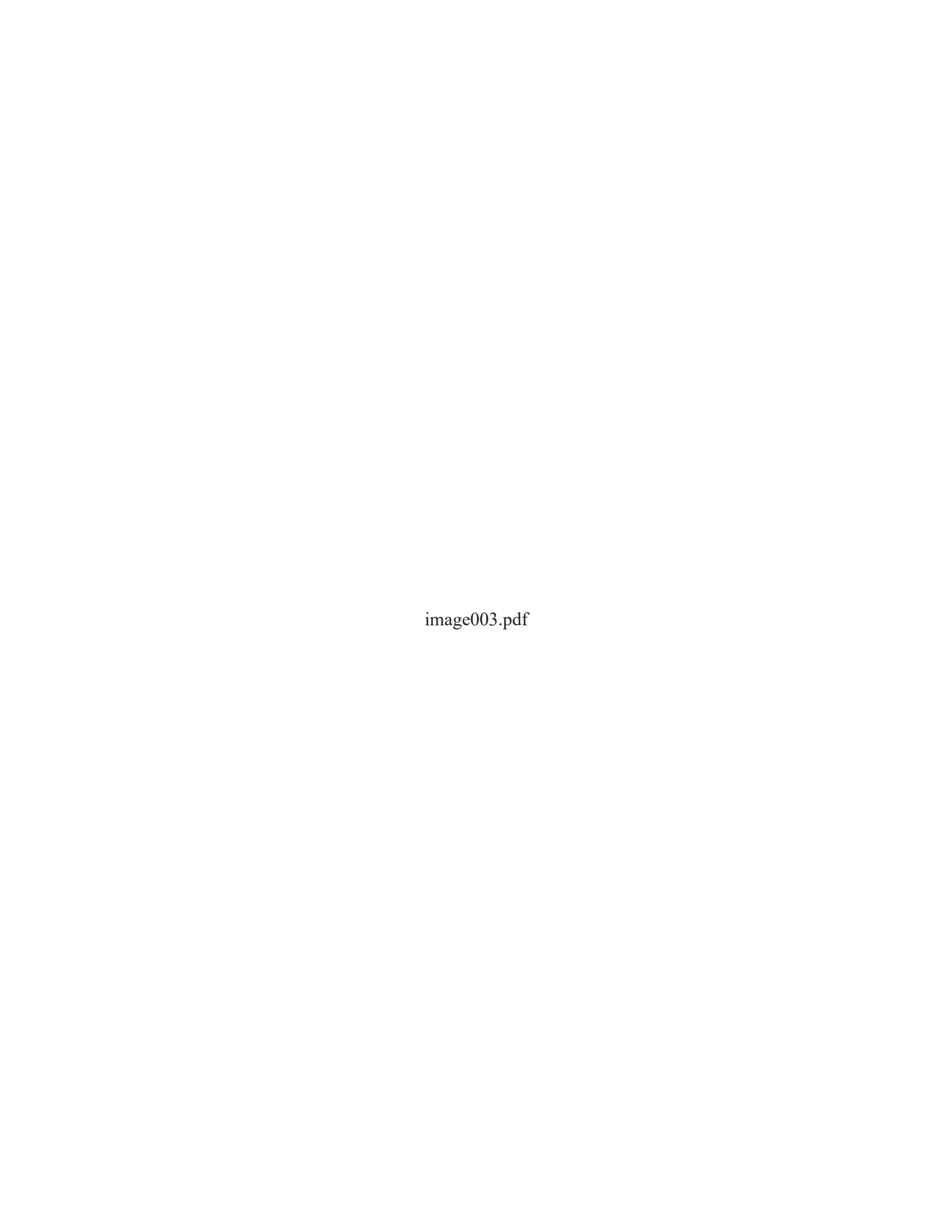
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2017
CANADA'S BEST
DIVERSITY EMPLOYERS

Compare - Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable]** **[NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act. and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during ~~a~~each reference period will reasonably align with the fair allocation amount determined in respect of ~~the~~such reference period under this Part as ~~of~~estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not ~~be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy**

adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the

balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, ~~the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner ~~of the regulatory asset~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

~~**200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

~~**(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d)amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable][NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act, and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during each reference period will reasonably align with the fair allocation amount determined in respect of such reference period under this Part as estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]**

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties

arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
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Please find attached Osler’s most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of po

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AttachmentId=5Fair Hydro Act - Osler Comments on v 4.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: WSComparison__6714670_1-_6712834_3.pdf
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca)
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com);

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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com);

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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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416-212-8392

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system ~~is~~will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

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"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~its billing practices and invoices to reflect the new rates.

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Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

(~~5~~4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

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Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

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Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period~~, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period~~.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

~~(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.~~

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

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Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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~~Moved deletion~~	
Inserted cell	
Deleted cell	
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Padding cell	

Statistics:	
	Count
Insertions	38
Deletions	29
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	67

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RE_ In advance of Wednesday’s call with the IESO.rtf

From: Jeannette Briggs [jeannette.briggs@ieso.ca]
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: In advance of Wednesday's call with the IESO
Date: Wednesday, June 28, 2017 08:27:50
Attachment 1: IMO-Charge-Types-and-Equations.pdf

In advance just sending our charge type and equation document which is available at the following
link: http://www.ieso.ca/-/media/files/ieso/document-library/market-rules-and-manuals-library/market-manuals/settlements/imo-charge-types-and-equations.pdf

I will make reference to it in order to answer your questions around uplifts.

Regards,

Jeannette Briggs Director, Settlements - Corporate Services

Independent Electricity System Operator (IESO)| T: 905-855-6364 | C: 416-997-6364

Station A, Box 4474, Toronto, ON, M5W 4E5

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals

From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: June 28, 2017 2:25 AM
To: Jeannette Briggs
Cc: Petsche, Nadine (TBS)
Subject: FW: In advance of Wednesday's call with the IESO

Hi Jeannette,

Thank you for this. Your responses are very helpful.

I made some notes to myself (in blue) in the e-mail below. Since they will guide some of my questions on our call, I thought I would share them with you for reference.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Jeannette Briggs [mailto:jeannette.briggs@ieso.ca]
Sent: Monday, June 26, 2017 5:01 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Nadine.Petsche@ontario.ca
Subject: In advance of Wednesday's call with the IESO

LeeAnne,

Here are the responses to your questions on Market Settlement. Susan Nicholson will answer the questions around accounting verbally. However, given the number of questions you had on settlement related issues, I thought it would be better to provide written responses. Of course, I am happy to discuss them further with you.

Market Administration/Settlement

Confirm/correct the following - see responses below :

Price IESO Market Participants pay comprised of:

- Electricity price:

· Electricity commodity price (HOEP) Non-dispatchable loads pay HOEP, Dispatchable loads pay MCP

· Global Adjustment Do all loads pay GA or only non-dispatchable loads paying HOEP?

- Wholesale Market Services Charges (includes IESO fee, Hourly, and Non-hourly Uplifts What are uplifts? How are they determined?, Government Programs Smart meters, for example, DR What is DR?, IESO fee)

- Transmission price

- Debt Retirement Charge

Note LDC's have "customers" and this is where you find Distribution charges and no DRC for residential customers Why is there no DRC for residential customers?, IESO's Wholesale Market Service Charge is called Wholesale Market Service Rate which is set annually by the OEB (each component set separately?) to be charged by LDC under their tariff to customers. LDCs pay the IESO Administered Market charges as invoiced and recover from customers through their approved OEB rates and tariffs. Differences in RPP (are all LDC customers RPP customers?)

collections verses commodity costs paid to the IESO are submitted monthly to the IESO to be included as a separate line set-offs to LDC invoices and the IESO holds the variance (debit/credit) Doesn't the HOEP rate flow through to consumers?

.

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment – not sure what "only settles" see above we settle significantly more than commodity price component – in 2016 we settled $17.2B

Supply of electricity comes from:

Dispatchable generators – paid MCP

Non-dispatchable generators – paid MCP

I don't understand how the contracts work and what generators are under contract

1. OPG (paid 5 minute market clearing price (MCP) but settled for difference on the regulated rate set by OEB).

2. Non-utility generators (paid MCP when injecting and settled for differences. Financial settlement set by contract – contracts held by OEFC and the IESO)

3. Generation facilities including Bruce Power under contract with IESO (paid MCP when injecting and settled for differences - financial settlement set by contract)

4. Imports (paid HOEP or and under contract as in Hydro Quebec contract)

Are there are other suppliers that are paid HOEP? Fit and Micro-Fit which would not be "generation facilities" necessarily and often embedded within a LDC, merchant generators that are not under contract, a few NUGs that have not renewed contracts may be in this category too,

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 and other contracted supply above: 95.8%

What is the nature of the contracts IESO enters into? There are contracts within the IESO Administered Market for services such Ancillary Services (What is this? Does it make up part of the IESO fee?) and financial contracts for supply capacity that are not part of the IESO Administered Market but funded through GA. I don't understand this. Why are they not part of the IESO Administered Market?

Participation agreements

· IESO enters into participation agreements with all market participants (buyers and sellers) Yes PAs are entered for the IESO Administered Markets but we also have participation agreement with program participants, adherence to market rules is restricted for these MPs to rules around programs i.e. not all MRs are applicable.

· Participation agreements bind IESO and counterparty to follow market rules Yes as it relates to the IESO Administered Markets including ancillary services contracts. This has nothing to do with participants who are under supply contracts where IESO is counterparty. I don't understand this.

· Participation agreement would be the only contract IESO enters into with #1, #2, #4 above No if you are participating in the IESO Administered Markets you are a registered MPs with a PA. Unrelated, the same participant may have a separate **financial agreement** and contract with the IESO as counterparty. These are two separate and distinct treatments and should not be confused. In fact the IESO under Electricity Act has an object that there is effective separation between these two functions.

Supply contracts

· Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?) No we do not pay for supply of electricity through contracts. We contract for services within the IESO Administered Market all well defined in the market rules. All other contracts are financial contracts for capacity – this does not tie to any commitment within the IESO Administered Markets for the supply of electricity. The IESO administers a competitive transparent market based on bids/offers for consumption and regulation market I don't understand this

· Does the IESO negotiate the terms of these contracts? Policy is set by the Ministry of Energy in the form of directives and IESO implements the directives through financial contracts.

Buyers of electricity from IESO grid are comprised of:

· LDCs All LDCs are non-dispatchable loads

· Directly connected participants (do not necessarily need to large but typically are larger to make sense to be an MP) Directly connected participants can be dispatchable or non-dispatchable loads

The electricity commodity price paid by all buyers is HOEP. No, dispatchable loads pay MCP. There is an algorithm that determines MCP every 5 minutes based on supply/demand, bids/offers and the 12 MCPs create Hourly Ontario Energy Price (HOEP).

Non-dispatchable loads (which includes distributors, as well as municipalities, hospitals and large factories) pay HOEP

Dispatchable loads pay MCP

Although IESO determines HOEP, IESO is not really determining rates charged to

buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost. The IESO settles the IESO Administered Market including MCP/HOEP, GA for Class A and Class B (does this cover all of the GA?), the amount for WSMC, and Transmission which are all billed to MPs (dispatchable and non-dispatchable loads?) including LDC based on their measured quantities of their delivery point meters registered with the IESO. I believe you are making reference to RPP customers of LDCs (what other types of customers does a LDC have?) which the OEB creates an RPP rate (Tier 1/ Tier 2, for conventional meters) and TOU (for smart meters) that over time (currently 6 months) adds to what the LDCs will pay the IESO for commodity (HOEP plus GA). Happy to explain further if unclear. Yes, please.

Regards,

Jeannette Briggs Director, Settlements - Corporate Services

Independent Electricity System Operator (IESO)| T: 905-855-6364 | C: 416-997-6364

Station A, Box 4474, Toronto, ON, M5W 4E5

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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IMO-Charge-Types-and-Equations.pdf

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LIST

IESO Charge Types and Equations

Issue 61.0

This document enumerates the various charge types and equations used in the IESO settlements process for IESO-Administered markets that are subject to a functional deferral, and those that are NOT subject to a functional deferral.

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This document may contain a summary of a particular *market rule*. Where provided, the summary has been used because of the length of the *market rule* itself. The reader should be aware, however, that where a *market rule* is applicable, the obligation that needs to be met is as stated in the "Market Rules". To the extent of any discrepancy or inconsistency between the provisions of a particular *market rule* and the summary, the provision of the *market rule* shall govern.

Document ID	IMP_LST_0001
Document Name	IESO Charge Types and Equations
Issue	Issue 61.0
Reason for Issue	Updated for Baseline 37.0
Effective Date	March 1, 2017

Document Change History

Issue	Reason for Issue	Date
• For change history prior to Issue 22.0, see Issue 29.0 of the CT&E. • For change history for Issue 22.0 to Issue 29.0, see Issue 38.0 of the CT&E. • For change history for Issue 30.0 to Issue 48.0, See Issue 59.0 of the CT&E		
49.0	Updated for Baseline 29.1. Added changes associated with IMDC-3 "Smart Metering Charge".	June 5, 2013
50.0	Updated for Baseline 30.0	September 11, 2013
51.0	Updated for Baseline 30.1	December 4, 2013
52.0	Update for Baseline 31.1	June 4, 2014
53.0	Update for Baseline 32.0	September 10, 2014
54.0	Updated for Baseline 33.0	March 4, 2015
55.0	Updated for Baseline 34.0	September 9, 2015
56.0	Updated for Baseline 34.1	December 2, 2015
57.0	Updated for Baseline 35.0	March 2, 2016
58.0	Updated for Baseline 35.1	June 1, 2016
59.0	Updated for Baseline 36.0	September 14, 2016
60.0	Updated for Baseline 36.1	December 7, 2016
61.0	Updated for Baseline 37.0	March 1, 2017

Related Documents

Document ID	Document Title
IMO_GDE_0002	HST Guide for IESO Transactions
IMP_SPEC_0005	Format Specifications for Settlement Statement Files and Data Files
MDP_PRO_0033	Market Manual 5: Settlements, Part 5.5: Physical Markets Settlement Statements

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Table of Changes

Reference (Section and Paragraph)	Description of Change
Section 2.2	Added new charge type 1421 – 'Capacity Agreement Settlement Credit' as per IMDC-36. Added new charge type 1422 – 'Capacity Agreement Penalty Settlement Amount' as per IMDC-36. Added new charge type 1423 – 'Energy Sales Agreement Settlement Credit' as per IMDC-36. Added new charge type 1424 – 'Energy Sales Agreement Penalty Settlement Amount' as per IMDC-36. Added new charge type 1471 – 'Capacity Agreement Balancing Amount' as per IMDC-36. Added new charge type 1472 – 'Capacity Agreement Penalty Balancing Amount' as per IMDC-36. Added new charge type 1473 – 'Energy Sales Agreement Balancing Amount' as per IMDC-36. Added new charge type 1474 – 'Energy Sales Agreement Penalty Balancing Amount' as per IMDC-36. Added new charge type 1467 – 'Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount' as per IMDC-33. Added new charge type 9982 – 'Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount' as per IMDC-33. Modified formula for charge types 147 and 148 to include charge types 1471-1474 in GA recovery.
Section 2.4	Added rounding convention for new charge types 1421-1424, 1471-1474. 1467 and 9982.

1. Introduction

1.1 Purpose

The purpose of this document is to provide the reader with the formulas and variable definitions behind each different *charge type* implemented in the *IESO Settlements* process. Furthermore, this document relates each *charge type* to the high-level description of the *settlement amount* within the *IESO market rules* and, where applicable, notes any aspects of the implementation of the *charge type* itself.

1.2 Scope

This document provides the formulas for each *charge type* implemented in the *IESO Settlements* System and those *charge types* which are currently the subject of a Functional Deferral. This document does not, however, provide the format of the information provided to *market participants* on *settlement statements* with respect to each *charge type*. For more information on these topics, the reader is directed to the following Technical Interface Document - "Format Specification for Settlement Statement Files and Data Files".

1.3 Who Should Use This Document

This document is intended for *market participants* in the *IESO-administered markets* who are seeking information regarding the calculations of *settlement amounts* related to each *charge type*. Depending on the activity of the *market participant* in the various *IESO-administered markets*, these *charge types* may have varying degrees of relevance to each *market participant* with respect to their financial settlements.

1.4 Conventions

Usage of an italicized term shall take on the meaning ascribed to that term in the *IESO market rules*.

Unless otherwise noted, usage of variable subscripts and superscripts within this document shall mirror the same usage with in Chapter 9 of the *IESO market rules*. One notable exception is the usage of notation to sum across *settlement amounts* for *charge type* "c". This is further noted in Section 2.2 of this document.

1.5 How This Document is Organized

This document is divided in 6 major subsections as follows:

Section 2.1: A table containing a description of each variable used within **Section 2.2**.

Section 2.2: A table describing *IESO charge types* and equations that are part of an active *IESO-administered market*.

Section 2.3: This section contains a description of rounding conventions for variables described in **Section 2.1**.

Section 2.4: This section contains a description of rounding conventions for *charge type* calculations described in **Section 2.2**.

Section 2.5: This section provides a description of *physical bilateral contract quantities*, their usage by the settlements system, and their use by *market participants* as a vehicle for transferring components of *hourly uplift*.

Section 2.6: This section describes how Day-Ahead import, export and linked wheel transactions are subject to an "Offer Price Test" in order to determine if they are exempt from the Day-Ahead Failure Charges (*charge types*, 1135, 1136 and 1134).

– End of Section –

2. IESO Charge Types and Equations that are Part of an Active IESO-Administered Market

2.1 Variable Descriptions

The following table contains descriptions of each variable used within Section 2.2, describing *IESO charge types* and equations that are part of an active *IESO-administered market*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
This column denotes the abbreviated name of each variable used within Section 2.2.	The full name of each variable used within Section 2.2.	A brief description of each variable used within the formulas illustrated within Section 2.2.	The relevant reference to the variable in question within the *IESO market rules*. The format of each reference is: [Chapter] [Section no.] e.g. Chapter 9 Section 3.1.6 would appear as: 9.3.1.6	This section notes any aspects of the implementation of the variable within the *IESO settlements* process which are otherwise not described in the *IESO market rules* – OR – refers the reader to the appropriate documentation.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
AAD	Adjustment Account Disbursement	The total dollar value of all disbursements from the *IESO adjustment account* authorized by the *IESO Board* in the current *energy market billing period.*	9.6.18.6	Same as *IESO* market rules.
$AQEI_{k,h}^{m,t}$	Allocated Quantity of Energy Injected	Allocated quantity in MWh of *energy* injected by *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Represents only those quantities derived from loss-adjusted and totalized *metering data.* Quantities derived from *interchange schedule data* is captured in the variable SQEI (see below).
$AQEW_{k,h}^{m,t}$	Allocated Quantity of Energy Withdrawn	Allocated quantity in MWh of *energy* withdrawn by *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Represents only those quantities derived from loss-adjusted and totalized *metering data.* Quantities derived from *interchange schedule data* is captured in the variable SQEW (see below).
$AQOR_{r,k,h}^{m,t}$	Allocated Quantity of Operating Reserve	Allocated quantity in MW of *class r reserve* for *market participant* 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.9	Same as *IESO market rules* and equivalent to DQSR (see below).
BE	Energy Offers	A matrix of 'n' *price-**quantity** pairs* offered by *market participant* 'k' to supply *energy* during *settlement hour* 'h'. *Offer prices* in this matrix may be altered to a **"lower limit"** for the purposes of calculating	9.3.5.2, 9.3.5.6 and 9.3.5.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		charge type 105 (Congestion Management *Settlement* Credit for *Energy)* where any such *offer price*: 1) Is associated with a *generation facility* located within Ontario; or imports and 2) Is less than a specified **"lower limit"** where such limit is the lesser of $0.00/MWh and the *energy market price* for the applicable *dispatch interval*. The situational criteria and threshold for applying such adjustments are further described in *IESO market rules* section 9.3.5.6. and 9.3.5.7.		
BL	Energy Bids	A matrix of 'n' *price-quantity pairs* bid by *market participant* 'k' to withdraw *energy* by a *dispatchable load* during *settlement hour* 'h'.	9.3.5.2	Same as *IESO market rules.*
BR_r	Operating Reserve Offers	A matrix of n *price-quantity pairs* offered by *market participant* 'k' to supply class r *operating reserve* during *settlement hour* 'h'.	9.3.5.2	Same as *IESO market rules*.
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought	*Physical bilateral contract quantity* of *energy* in MWh bought by *buying market*	9.3.1.6	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		participant 'k' from *selling market participant* 's' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.		
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold	*Physical bilateral contract quantity* of *energy* in MWh sold by *selling market participant* 'k' to *buying market participant* 'b' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.6	Same as *IESO market rules*.
CGC	Submitted Combined Guaranteed Costs	A financial amount consisting of fuel cost components defined on a *per-start* basis for a given *generation unit* calculated in a manner consistent with the applicable *market manual*, and encompassing the following elements: 1) Fuel and operation and maintenance (O&M) costs associated with unit synchronization to the *IESO-controlled grid* for a given start-up event (costs submitted via *IESO* portal). 2) Fuel and O&M costs associated with moving the *generation unit* from a valid start to its *minimum loading point* (costs submitted via *IESO* portal).	9.4.7B	Same as *IESO market rules*.
$DA_BE_{k,h}^{m,t}$	*Energy Offer* submitted into the *schedule of record at a delivery point*	*Energy offers* submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *delivery point* 'm' during *metering interval*	9.3.1.2B.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2		
$DA_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *schedule of record at a intertie metering point*	*Energy offers* submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.8A.2B and 9.3.8B.2	Same as *IESO market rules*
$DA_BL_{k,h}^{i,t}$	*Energy* Bids submitted into the *schedule of record*	Energy bids submitted in day-ahead, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2B.7 and 9.3.8D.2	Same as *IESO market rules*
DA_CGC	Submitted Day-Ahead Combined Guaranteed Costs	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT.	9.4.7D.1	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		A financial amount consisting of fuel cost components defined on a *per-start* basis for a given *generation unit* calculated in a manner consistent with the applicable *market manual*, and encompassing the following elements: 1) Fuel and operation and maintenance (O&M) costs associated with unit synchronization to the *IESO-controlled grid* for a given start-up event (costs submitted via *IESO* portal). 2) Fuel and O&M costs associated with moving the *generation unit* from a valid start to its *minimum loading point* (costs submitted via *IESO* portal).		
$DA_DQSI_{k,h}^{m,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Injection at a delivery point	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *delivery point* 'm' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_DQSI_{k,h}^{i,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Injection at an intertie metering point	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_DQSW_{k,h}^{i,t}$	*Schedule of Record* Dispatch Quantity of Energy Scheduled for Withdrawal	Day-ahead constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during metering interval 't' of settlement hour 'h'	9.3.1.2A	Same as *IESO market rules.*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DA_ELMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	Day-ahead constrained schedule intertie price at the *delivery point* 'm' of the sink for the export transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	Day-ahead constrained schedule intertie price at the *delivery point* 'm' of the source for the import transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2A	Same as *IESO market rules.*
$DA_SNLC_{k,h}^{m}$	Speed-no-load costs submitted into the *schedule of record at a delivery point*	As-offered *speed-no-load cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *delivery point* 'm'	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SNLC_{k,h}^{p}$	Speed-no-load costs submitted into the *schedule of record at a pseudo-unit*	As-offered *speed-no-load cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *pseudo-unit* 'p'	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SUC_{k,h}^{m}$	Start-up costs submitted into the *schedule of record at a delivery point*	As-offered *start-up cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *delivery point* 'm' where *settlement hour* 'h' is the initial hour in the DACP start event	9.3.1.2B.7	Same as *IESO market rules.*
$DA_SUC_{k,h}^{p}$	Start-up costs submitted into the *schedule of record at a pseudo-unit*	As-offered *start-up cost* associated with *three-part offers* for a given *settlement hour* 'h' for *market participant* 'k' at *pseudo-unit* 'p' where *settlement hour* 'h' is the initial hour in the DACP start event	9.3.1.2B.7	Same as *IESO market rules.*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DIPC_{k,h}^{m,t}$	Derived Interval Price Curve	*Energy price curves* derived per interval from submitted hourly day-ahead PSU *energy offers*, represented as a N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *delivery point* 'm' (where 'm' is a CT or ST delivery point) during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.11	Same as *IESO market rules*. Refer to Market Manual 9.5, Appendix B for a detailed description of DIPC.
$DIGQ_{k,h}^{m,t}$	Derived Interval Guaranteed Quantity	Portion of the day-ahead constrained quantity scheduled for injection that is eligible for DA-PCG for *market participant* 'k' at *pseudo unit* 'p' during *metering interval* 't' of *settlement hour* 'h'	9.3.1.11	Same as *IESO market rules*. Refer to Market Manual 9.5, Appendix C for a detailed description of DIGQ.
$DQSI_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Injection	Dispatch quantity of *energy* scheduled for injection in the *real-time schedule* by *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).
$DQSR_{r,k,h}^{m,t}$	Dispatch Quantity Schedule of Operating Reserve	Dispatch quantity schedule of *class r reserve* for *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.4 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DQSW_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Withdrawal	Dispatch quantity of *energy* scheduled for withdrawal in the *real-time schedule* by *market participant* 'k' at location 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.1.4A	Same as *IESO market rules*. N.B. Location m is further subject to the functional deferral described in Section 3.1.4A of Chapter 9 of the *market rules* (ref. 9.3.1.4A).
DRACP	Demand Response Auction Clearing Price	The *demand response auction clearing price* for the *commitment period* and zone.	N/A	Refer to Market Manual 5.5
$DRACP_h$	Hourly Demand Response Auction Clearing Price	The *demand response auction clearing price* for the *commitment period* and zone divided by the hours of availability for a day.	N/A	Refer to Market Manual 5.5
$DRBOC_k$	Demand Response Buy-Out Capacity	The buy-out capacity is an amount that is being reduced from the *demand response capacity obligation* for *demand response market participant* 'k'.	N/A	Refer to Market Manual 5.5
$DRCO_k$	Demand Response Capacity Obligation (MW)	The *demand response capacity obligation* amount for the *commitment period* and zone for *demand response market participant* 'k'. The initial capacity obligation is acquired through the *demand response auction* and subject to being reduced via the buy-out process.	N/A	Refer to Market Manual 5.5

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$DREBQ_k$	Demand Response Energy Bid Quantity	The *demand response energy bid* quantity calculated for *demand response market participant* 'k' as the sum of the quantity of *demand response capacity* provided by all participating demand response resources.	N/A	Refer to Market Manual 5.5
DRNPF	Demand Response Non-Performance Factor	The non-performance factor as listed in Section 7.1 of Market Manual 12 that corresponds and applies to the month being settled.	N/A	Refer to Market Manual 5.5
DRSQty	Demand Response Scheduled Quantity	Calculated as (Total Bid Qty – Schedule) where 'Total Bid Qty' is the maximum quantity of the *demand response energy bid* and where 'Schedule' is the real-time constrained schedule quantity.	N/A	Refer to Market Manual 5.5
EEQ	Excluded Energy Quantity	The total volume of *energy* (MWh) supplied to Fort Frances Power Corporation Distribution Inc. by Abitibi-Consolidated Inc. during the month.	N/A – subject to regulations made pursuant to Bill 100.	N/A – See regulations.
$EGEI_k$	Embedded Generator Energy Injection	The total volume of *energy* (MWh) supplied by *embedded generator*s during the month to *distributors* who are *market participants* and to all embedded distributors to whom the *market participant* 'k' is the host *distributor*, adjusted for losses as required by the *OEB*, Retail Settlement Code.	N/A – subject to regulations made pursuant to Bill 100.	N/A – See regulations.
$EIM_{k,h}$	Operating Profit Function for the IMPORT of Energy	This Operating Profit function is used for the calculation of the Intertie Offer/Bid Guarantee	9.3.8A	$EIM_{k,h}$ IS NOT A VARIABLE

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	under the Intertie Offer/Bid Guarantee Settlement Credit	Settlement Credit (IOBG) with respect the IMPORT of *energy*.		$EIM_{k,h}$ is the output of a particular usage of the Operating Profit (OP) function defined within Chapter 9, Section 3.8A. $EIM_{k,h}$ Input variables into the Operating Profit (OP) Function include: MQSI, EMP, and BE.
$EMP_h^{i,t}$	5-minute Energy Market Price at the Interties	Energy *market price* applicable to *intertie metering point* 'i' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$EMP_h^{m,t}$	5-minute Energy Market Price within Ontario	Energy *market price* applicable to *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$EMP_h^{REF,t}$	5-minute Energy Market Reference Price	Reference energy *market price* used to value losses in the calculation of the *Transmission Charge Reduction Fund*[1] during in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3 and 9.3.6.2	Same as *IESO market rules*.
ETS	Export Transmission Service Tariff Rate	Export Transmission Service Tariff Rate in units of $/MWh.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
FP_h^m	Fixed Energy Rate	A fixed *energy* rate for all *metering intervals* in *settlement hour* 'h'.	N/A – subject to regulations made pursuant to *Ontario Energy*	N/A – See regulations.

[1] *Market Rules* ref.: Section 3.6.2 of Chapter 9.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
			Board Act, 1998 until March 31, 2005 and by the *OEB* under such regulations commencing April 1, 2005.	
FPC_h^m	Rate for a designated group of *charge types* (see description of *charge type* 141)	This variable is reserved for *charge type* 141 and applies with respect to charges for the period commencing December 1, 2002 and ending March 31, 2005. See Ontario Regulation 436/02 and Ontario Regulation 98/05.	N/A – subject to regulations made pursuant to *Ontario Energy Board Act, 1998*.	N/A – See regulations
GA – $AQEW_{g,k,h,M}^{m,t}$	Allocated Quantity of Energy Withdrawn for elements of the Global Adjustment distribution	Allocated quantity in MWh of *energy* withdrawn by *market participant* or Distributor 'k' at *RWM* 'm' in *metering interval* 't' of *settlement hour* 'h' in month 'M' for element "g" Where 'g' is 1 for Class A Market Participant or Consumer load, and 2 for *energy* withdrawn by Generator 'k' in the course of providing Ancillary Services.		
GRP	Generator Regulated Price	A regulated price ($/MWh) with respect to output of OPG's regulated generating stations, set by the *OEB*.	N/A – subject to regulation by the Ontario Energy Board.	N/A – See regulations

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$HOEP_h$	Hourly Ontario Energy Price	*Hourly Ontario Energy Price* in *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$IOG_FV_{k,h}^{i}$	IOG Floor Value	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. The IOG_FVk,hi is a floor value (in dollars to the nearest cent) derived from: • The day-ahead offer prices for the import transaction submitted by the *market participant* over the range of the *pre-dispatch of record* constrained quantity scheduled for that import transaction; and • *Real-time* offer prices for the import transaction at the corresponding location in the corresponding *settlement hour* for any additional *energy* scheduled above and beyond the *pre-dispatch of record* constrained quantity scheduled for that import transaction: **NOTE:** The $IOG_FV_{k,h}^{i}$ is formulated in the manner described in Chapter 9, Section 3.8A.8 of the *IESO market rules* and is used in the formulation of the intertie offer guarantee adjustment (see also, Section 2.2 entry for	9.3.8A.8	Same as *IESO market rules* See Chapter 9, Section 3.8A.8 for details concerning its formulation.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		charge type 1137 within this document).		
$LCD_{k,h}^{m}$	Line Connection Demand (KW)	Billing Demand for Line Connection Transmission Service (KW) for *transmission customer* 'k' at transmission delivery point 'm' during *settlement hour* 'h' in which $LCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
MC_{h}^{m}	Minimum Consumption	Calculation of the self-induced dispatchable load CMSC clawback under Business Rule 2. The minimum consumption is equal to the quantity in the price quantity pair where the bidding price is MMCP (i.e., $2000) at *RWM metering point* 'm' for settlement hour 'h'.	9.3.5.1A	
MI	Ordered matrix of $MQSI_{k,h}^{i,t}$ and corresponding IOG *settlement amounts*	Used for the calculation of the IOG OFFSET *settlement amount*. A matrix of X pairs of *market schedule* quantities scheduled for injection by *market participant* 'k' at all *intertie metering points* 'i' in *metering interval* 't' of *settlement hour* 'h' ($MQSI_{k,h}^{i,t}$) paired with the corresponding component of the intertie offer guarantee settlement credit for each *intertie metering point* 'i'. See equation in Chapter 9, Section 3.8A.4 of the *IESO market rules* for further details.	9.3.8A.4	Same as *IESO market rules*.
$MLP_{k,h}^{m,t}$	Minimum Loading Point	Minimum output of *energy* the *market*	9.3.1.2B.7	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		participant 'k' at *delivery point* 'm' can maintain without ignition support in *metering interval* 't' of *settlement hour* 'h'		
$MLP_CONS_{k,h}^{m,t}$	Minimum Loading Point for a steam turbine resource or a combustion turbine resource associated to a pseudo unit	Minimum output of *energy* the *market participant* 'k' at *delivery point* 'm' can maintain without ignition support in *metering interval* 't' of *settlement hour* 'h'	9.3.1.2B.7	Same as *IESO market rules.* Refer to Market Manual 9.4, Section 4.1.2.2 for a detailed description of constraints applied for PCG eligible combined cycle plants.
$MQSI_{k,h}^{m,t}$	Market Quantity Scheduled for Injection	Market quantity scheduled for injection in the *market schedule* by *market participant* 'k' at *RWM* or *intertie metering point* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules.*
$MQSI\{adj\}_{k,h}^{m,t}$	Adjusted Market Quantity Scheduled for Injection	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. Used for the calculation of the IOG OFFSET *settlement amount*. $MQSI\{adj\}_{k,h}^{i,t}$ is each (and where applicable, adjusted) quantity of *energy* scheduled for injection in the *market schedule* by *market participant* 'k' at an *intertie metering point* 'i' in *metering interval* 't' of *settlement hour* 'h' corresponding with each quantity, $MQSI_{x*,k,h}^{i,t}$	9.3.8A.4	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		in matrix MI, row x*.		
$MQSW_{k,h}^{m,t}$	Market Quantity Scheduled for Withdrawal	Market quantity scheduled for withdrawal in the *market schedule* by *market participant* 'k' at *RWM* or *intertie metering point* 'm' in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.3	Same as *IESO market rules*.
$NSD_{k,h}^{m}$	Network Service Demand (KW)	The Billing Demand for Network Transmission Service (KW) is defined as the higher of: transmission customer coincident peak demand (KW) in the hour of the month when the total hourly demand of all PTS customers is highest for the month; and 85% of the customer peak demand in any hour during the peak period 7 AM to 7 PM (local time) on *business days* defined by the *IESO*. For the purposes of determining business days for calculating transmission charges, the *IESO* uses the holidays identified by the Ontario Energy Board. The peak period hours will be between 0700 and 1900 hours Eastern Standard Time during winter (i.e. during standard time) and 0600 to 1800 hours during summer (i.e. during daylight savings time), in conformance with the meter time standard used by the *IESO*	N/A	Subject to the OEB "Ontario Transmission Rate Order".

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		settlement systems.		
ONPAO	Ontario Power Generation Non-Prescribed Assets Output	OPG's Non-Prescribed Assets are those generation assets operated and controlled by Ontario Power Generation in service as of January 1, 2006, excluding Lennox Generating Station, that are not prescribed assets under section 78.1 of the *Ontario Energy Board Act, 1998* as amended by the "Electricity Restructuring Act, 2004". ONPAO refers to the generation output from OPG's Non-Prescribed Assets, over each hour of the quarter adjusted to take account of volumes sold through forward contracts in effect as of January 1, 2005. For greater certainty, any output from ONPA resulting from fuel conversion by Ontario Power Generation in ONPA, or incremental output from ONPA resulting from refurbishment or expansion is to be excluded from ONPAO. Incremental Output is defined as: generation output x (new total installed capacity – installed capacity as of January 1, 2006) / new total installed capacity	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
OP	Operating Profit Function	The Operating Profit function is used for the calculation of the Congestion Management Settlement Credit (CMSC) with respect to constrained on/off payments for *energy*, *operating reserve*. It is also used for the calculation of the Day-Ahead Production Cost Guarantee components, the Day-Ahead Generator Withdrawal Charge, the Day-Ahead Import and Export failure charges, and the Import Offer Guarantee Settlement Credit.	9.3.5.2 and 9.3.8A.2	OP IS NOT A VARIABLE OP is a mathematical function defined within Chapter 9, section 3.5.2. of the *IESO market rules* Input variables include: MQSI, MQSW, SQROR AQEI, AQEW, AQOR SQEI, SQEW, DSQI, DSQW, DSQR DA_DQSI, DA_DQSW, PD_DQSI, PD_DQSW BE, BL, BR_r PD_BE, PD_BL DA_BE, DA_BL EMP MLP, MLP CONS DIPC OPCAP OP is also used within Chapter 9, Section 9.8A.2 of the *IESO market rules* to derive the Energy Import ($EIM_{k,h}$) sub-component of the Intertie Offer Settlement Credit

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
				(IOG) using the following input variables: MQSI BE EMP
$OPCAP_{k,h}^{m,t}$	Operating Capacity	De-rating of the generation unit by *market participant* 'k' at *delivery point* 'm' in *metering interval* 't' of *settlement hour* 'h'	9.3.1.2B.7	Same as *IESO market rules.*
$OPE\{adj\}_{k,h}^{i}$	Adjusted CMSC component for *energy* used in the DA-Ahead IOG	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. This congestion management *settlement* credit *settlement amount* (CMSC) component is specifically used in the calculation of the Day-Ahead IOG for import transactions that are subject to a *constrained-on event* in the *real-time market.* $OPE\{adj\}_{k,h}^{i}$ is an adjusted component of The congestion management *settlement* credit *settlement amount* (CMSC) for *market participant* 'k' at *intertie metering point* 'i' for *settlement hour* 'h' in which the constrained schedule is the lesser of $PDR_DQSI_{k,h}^{i,t}$ or $DQSI_{k,h}^{i,t}$ but in all instances, greater than or equal to $MQSI_{k,h}^{i,t}$.	9.3.8A.2A	'OP' is a mathematical function used within Chapter 9, Section 9.3.8A.2A of the *IESO market rules* to derive Day-Ahead Intertie Offer Guarantee. Please see the *market rules* for information regarding its formulation.
ORL	Ontario Power Generation	For the period May 1, 2006 to April 30, 2007	N/A	The formula for calculating the

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	Revenue Limit	ORL is equal to $46/ MWh. For the period May 1, 2007 to April 30, 2008 ORL is equal to $47/ MWh. For the period May 1, 2008 to April 30, 2009 ORL is equal to $48/ MWh.		OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAA	Pilot Auction Amount	Refers to the Pilot Auction administered by the *Ontario Power Authority* in the first half of 2006. The volume in MWh over each hour in the quarter that is sold by Ontario Power Generation through the PA.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAORL	Pilot Auction Ontario Power Generation Revenue Limit	For the period May 1, 2006 to April 30, 2007 PAORL is equal to $51/ MWh. For the period May 1, 2007 to April 30, 2008 PAORL is equal to $52/ MWh. For the period May 1, 2008 to April 30, 2009 PAORL is equal to $53/ MWh.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).
PAP	Pilot Auction Price	The weighted average auction price in $/ MWh over each hour of the quarter realized for the PAA by Ontario Power Generation.	N/A	The formula for calculating the OPG Rebate is subject to Ministerial Directive made under Order-in-Council 1062/2006 (May 17, 2006).

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$PB_IM_h^t$	Price bias adjustment factor for import transactions	Price bias adjustment factor for import transactions in effect during *metering interval* 't' of *settlement hour* 'h'.	9.3.8C.3	Same as *IESO market rules*
$PB_EX_h^t$	Price bias adjustment factor for export transactions	Price bias adjustment factor for export transactions in effect during *metering interval* 't' of *settlement hour* 'h'.	9.3.8C.5	Same as *IESO market rules*
$PD_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the Pre-dispatch	*Energy offers* submitted in Pre-dispatch, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2D	Same as *IESO market rules.*
$PD_BL_{k,h}^{i,t}$	*Energy* Bid submitted into the Pre-dispatch	Energy bids submitted in *pre-dispatch*, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2	9.3.1.2D	Same as *IESO market rules.*
$PD_DQSI_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for injection at an	*Pre- dispatch* constrained quantity scheduled for injection by *market participant* 'k' at	9.3.1.2C	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
	intertie metering point	*intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.		
$PD_DQSW_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for withdrawal at an *intertie metering point*	*Pre- dispatch* constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2C	Same as *IESO market rules*
$PD_ELMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	*Pre-dispatch* constrained schedule intertie price at the *delivery point* 'm ' of the sink for the export transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2C	Same as *IESO market rules.*
$PD_EMP_{h}^{m,t}$	Pre-dispatch energy market price for Ontario	*Pre-dispatch* projected *energy market price* applicable to all *delivery points* 'm' in the Ontario zone in *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2C	Same as *IESO market rules*
$PD_ILMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	*Pre-dispatch* constrained schedule intertie price at the *delivery point* 'm' of the source for the import transaction during *metering interval* 't' of *settlement hour* 'h'	9.3.1.2C	Same as *IESO market rules.*
$PDF_{k,m,d}$	Peak Demand Factor	The Peak Demand Factor for Class A Market Participant or Distributor 'k' for month 'm' with effectiveness ratio 'd'.	N/A – subject to regulation by the *Ontario Energy Board*	N/A – See regulations.
$PDR_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *pre-dispatch of record*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT.	9.3.1.2B	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
		Energy offers submitted into the *pre-dispatch of record*, represented as an n by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price-quantity pair*, where *offered prices* are in column 1 and *offered quantities* are in column 2.		
$PDR_DQSI_{k,h}^{i,t}$	*Pre-dispatch of record* dispatch quantity scheduled for injection at an *intertie metering point*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. *Pre-dispatch of record* constrained quantity scheduled for injection by *market participant* 'k' for an import transaction at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2A	Same as *IESO market rules*
$PDR_DQSI_{k,h}^{m,t}$	*Pre-dispatch of record* dispatch quantity scheduled for injection at a *delivery point*	EFFECTIVE OCTOBER 13, 2011, THIS VARIABLE IS NO LONGER USED IN THE CALCULATION OF ANY SETTLEMENT. *Pre-dispatch of record* constrained quantity scheduled for injection by *market participant* 'k' at *delivery point* 'm' during *metering interval* 't' of *settlement hour* 'h'.	9.3.1.2A	Same as *IESO market rules*

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$PGS_{h,M}$	Allocated Quantity of Energy Withdrawn by OPG at Beck Pump Generating Station	Allocated quantity in MWh of *energy* withdrawn by OPG at Beck Pump Generating Station in *metering interval* 't' of *settlement hour* 'h' for month 'M'.		
$PROR_{r,h}^{m,t}$	5-minute Operating Reserve Price	*Market price* in $/MW of *class r reserve* in *metering interval* 't' of *settlement hour* 'h' at *RWM* 'm' or *intertie metering point* 'm'.	9.3.1.4	Same as *IESO market rules*.
$PST_{k,h}^{p,t}$	Steam turbine portion from Daily Generator Data	The percentage of the *pseudo-unit*'s schedule that relates to the steam turbine in association with *offer k* for *market participant* 'k' at *pseudo unit* 'p' during *metering interval* 't' of *settlement hour* 'h'	7.2.2.2	Same as *IESO market rules*.
PTS-L	Provincial Transmission Service Line Connection Service Rate ($/KW)	Line Connection Transmission Tariff Service Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
PTS-N	Provincial Transmission Service Network Service Rate ($/KW)	Network Transmission Tariff Service Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
PTS-T	Provincial Transmission Service Transformation Connection Service Rate ($/KW)	Transformation Connection Service Transmission Tariff Rate in units of dollars per kilowatt.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
$QTR_{k,h}^{i,j}$	Quantity of Transmission Rights Owned	Quantity of TRs in MW assigned to *market participant* 'k' for transmission from injection *TR zone* 'i' to withdrawal *TR zone* 'j'.	9.3.1.8 and 8.4.2	Same as *IESO market rules*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
RPP_l	Regulated Price Plan	A fixed *energy* rate for all *metering intervals* based on consumption level l.	N/A – subject to regulation by the *Ontario Energy Board*	N/A – See regulations.
RQ	Reallocate Quantity	A quantity derived from a *physical bilateral contract quantity* ($BCQ_{k,b,h}^{m,t}$ or $BCQ_{s,k,h}^{m,t}$) in order to reallocate a component of *hourly uplift* from the *buying market participant* to the *selling market participant* in direct proportion to the size of the *physical bilateral contract.*	N/A	See hourly uplift charge types in Section 2.2
$SQEI_{k,h}^{i,t}$	Scheduled Quantity of Energy Injected at an *intertie metering point*	Scheduled quantity in MWh of *energy* injected by *market participant* 'k' at *intertie metering point* 'i' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.9	This variable is a sub-set of variable AQEI described in Section 3.1.9 of Chapter 9 of the *market rules*, specifically referring to those quantities derived from *interchange schedule data*.
$SQEW_{k,h}^{i,t}$	Scheduled Quantity of Energy Withdrawn at an *intertie metering point*	Scheduled quantity in MWh of *energy* withdrawn by *market participant* 'k' at *intertie metering point* 'i' for each *metering interval* 't' in *settlement hour* 'h'.	9.3.1.9	This variable is a subset of variable AQEW described in Section 3.1.9 of Chapter 9 of the *market rules*, specifically referring to those quantities derived from *interchange schedule data*.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
$SQROR_{r,k,h}^{m,t}$	Scheduled Quantity of class r Operating Reserve	Market Schedule quantity in MW of *class r reserve* for *market participant* 'k' in *metering interval* 't' of *settlement hour* 'h' at *RWM* 'm'.	9.3.1.4	Same as *IESO market rules*.
$TCD_{k,h}^{m}$	Transformation Connection Demand (KW)	Billing Demand for Transformation Connection Transmission Service (KW) for *transmission customer* 'k' at transmission delivery point m during *settlement hour* 'h' in which $TCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	N/A	Subject to the OEB "Ontario Transmission Rate Order".
$TD_{k,h,c}$	Total Market Settlement Amount	Total *settlement amount* (dollars) for the market used in *hourly uplift* and calculations for various other non-hourly *settlement amounts* for *market participant* 'k' or *transmission customer* 'k' during *settlement hour* 'h' with respect to *charge type* 'c'.	N/A	This is purely a notational term is used within the documentation to describe the aggregation of various *settlement amounts*. A summation across *charge type* 'c' denotes an aggregation of all *settlement amounts* for that *charge type* for the time period concerned. e.g.: $\sum_{c}^{T}$ indicates a summation of all *settlement amounts* for *charge type* 'c' during all *metering intervals* 'T'.
TLQ	Threshold Load Quantity	A threshold (kWh) with respect to monthly consumption of regulated customers, set by the *OEB*.	N/A – subject to regulation by the *Ontario Energy*	N/A – See regulations.

Key to the Table Below				
Variable used within Section 2	**Data Description**	**Description**	**Market Rules Reference**	**Relation to the corresponding variable description within the IESO Market Rules**
			Board.	
TP_c	Tariff price	A stipulated rate ($/MWh, $/KW) used in the calculation of a specific *charge type* 'c'.	N/A	This is purely a notational term is used within the documentation to describe the unique per MW or per MWh rate applied to specific quantities in order to calculate various *settlement amounts*.
TRMP	TR Market Clearing Price	The price of each *transmission right* in a single round of a *TR auction*.	8.4.15	Same as *IESO market rules*.
TRCAD	TR Clearing Account Disbursements	The total dollar value of all disbursements from the *TR clearing account* authorized by the *IESO Board* in the current *energy market billing period*.	9.4.7.2	Same as *IESO market rules.*
$X_h^{m,t}$	Settlement Floor Price for exports	A *settlement* floor price for *energy* applicable to *intertie metering point* 'm' *metering interval* 't' in *settlement hour* 'h' as set in the applicable *market manual*. The need for a *settlement* floor price other than *MMCP* shall remain in effect only until floor prices for *energy offers* from *registered market participants* that are *variable generators* or nuclear *generators* go into effect.	9.3.1.3	Same as *IESO market rules*

2.2 Charge Types and Equations

The following table contains the *IESO charge types* and equations that are part of an active *IESO-administered market*.

Key to the Table Below	
Charge Type Number	The designation number for each *charge type* enumerated below – which correspond to the *charge type* numbers used on *settlement statements* and *invoices*.
Charge Type Name	The name of the *charge type*.
Settlement Amount Acronym	The abbreviated name of the variable used to describe the *settlement amount* within the *IESO market rules*.
Market Rules Refer.	The relevant reference to the variable in question within the *IESO market rules*. The format for each reference is: [Chapter] [Section number] For example: “Chapter 9 Section 3.1.6” would appear as: 9.3.1.6
Equation	The equation used by the *IESO settlements process* to calculate the *settlement amount* related to each *charge type*.

Key to the Table Below	
Settlement Resolution	The level of granularity by which the *IESO settlements process* calculates the *settlement amount* (for which the *charge type* is related), and provides the supporting data in the settlement data file. Where: • "Interval" means that the calculations are performed on the basis of each relevant, 5-minute *metering interval*; • "Hourly" means that the calculations are performed on the basis of each *settlement hour*; • "Daily" means that the calculations are performed on the basis of each calendar day; • "Monthly" means that the calculations are performed on the basis of a calendar month (equivalent to a real-time market *billing period*); • "Quarterly" means that the calculations are performed on the basis of 3 month intervals; • "Yearly" means that the calculations are performed on the basis of a calendar year.
Cashflow	This column indicates whether or not the *settlement amount* (for which the *charge type* is related) is: • "Due *IESO*" – which means, owed to the *IESO* by the *market participant*;*** or • "Due MP" – which means, owed to the *market participant* by the *IESO*;*** or • "Either Way" – which indicates that the *settlement amount* in question could be either owed to the *IESO* by the *market participant* or owed to the *market participant* by the *IESO* in any given time period (according to the applicable "settlements resolution"). *****NOTE in cases where a Cashflow is designated as "Due *IESO*" or "Due MP" this should be read in the context of its intended use in the normal course of *settlements*. However, such cashflows can always be REVERSED in situations where an adjustment is applied to a *market participant*, or the application of a per-unit charge in order to offset an adjustment to another *market participant*.**
HST Tax Treatment within Ontario	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zone used for Tax Basis is (ONZN) for Ontario. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".

Key to the Table Below	
HST Tax Treatment for U.S., Manitoba and Quebec Generation	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zones used for Tax Basis are (NYSI) for US Generation, (MBSI) for Manitoba Generation and (PQSI) for Quebec Generation. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
HST Tax Treatment for US Load	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zone used for Tax Basis is (NYSI) for US Load. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
HST Tax Treatment for Manitoba and Quebec Load	• This column indicates the percentage levy as per the Harmonized Sales Tax (HST). • Zones used for Tax Basis are (MBSI) for Manitoba Load and (PQSI) for Quebec Load. • The applicable Zone ID may be found in column 7 of the applicable settlement statement detail record (see also, the Technical Interface Document entitled, "Detail Field Description"). • A complete list of Zones may be found in the Technical Interface Document entitled, "Standing Data".
Comments	This column notes any *charge types* that are governed by various documentation other than the *IESO market rules*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Financial Market Charge Types										
52	Transmission Rights Auction Settlement Debit	N/A	8.4.17	$QTR_{k,h}^{i,j} \times TRMP$	Daily	Due *IESO*	Exempt	Exempt	Exempt	Exempt	
	Physical Market Charge Types										
100	Net Energy Market Settlement for Generators and Dispatchable Load	$NEMSC_{k,h}$	9.3.3.2	For *dispatchable facilities* or an *intertie metering point* associated with: i) An injecting *boundary entity*; ii) A withdrawing *boundary entity* where the associated *intertie congestion price* is less than zero; iii) A withdrawing *boundary entity* conducting a wheeling through transaction that is linked as per Chapter 7, section 3.5.82 of the *market rules* $\sum_{t,m} (EMP_h^{m,t} \times ((AQEI_{k,h}^{m,t} + SQEI_h^i - AQEW_{k,h}^{m,t} - SQEW_h^i) +$	Interval	Either Way	13	13	0	13	Refer to HST Guide regarding tax treatment of negative priced imports and exports.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$\sum_{s,b} (BCQ_{s,k,h}^{m,t} - BCQ_{k,b,h}^{m,t}))$) For an *intertie metering point* associated with a withdrawing *boundary entity* where that *intertie congestion price* is not less than zero: $\sum_{t,m}((MAX (X_h^{m,t}, EMP_h^{m,t}) \times AQEI_{k,h}^{m,t})$							
101	Net Energy Market Settlement for Non-dispatchable Load	$NEMSC_{k,h}$	9.3	$HOEP_h \times \sum_{t,m} (AQEI_{k,h}^{m,t} - AQEW_{k,h}^{m,t} + \sum_s BCQ_{s,k,h}^{m,t}) - \sum_{n,b,t} (EMP_h^{m,t} \times BCQ_{k,b,h}^{n,t})$	Hourly	Either Way	13	N/A	N/A	N/A	
102	TR Clearing Account Credit	$TRCAC_k$	9.4.7.2	$TRCAD \times \sum_H^{M,T} [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the *billing periods* immediately preceding the current *billing period*, as determined by *IESO Board.* Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'. Where 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i' Where 'K' is the set of all *market participants* 'k'.	Monthly (when applicable)	Due MP	13	N/A	0	13	The *billing period* is defined in Market Manual 5.5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.27

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
103	Transmission Charge Reduction Fund	$TCRF_h$	9.3.6.2 and 8.4.18	$\sum_{t,m}(EMP_h^{m,t} - EMP_h^{REF,t}) \times \sum_k (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} - AQEI_{k,h}^{m,t} - SQEI_{k,h}^{i,t}) - \sum_k TRSC_{k,h}$	Hourly	Accumulates in the *TR Clearing Account*	N/A	N/A	N/A	N/A	See *IESO market rules*, Chapter 8 Section 4.18 for further details.
104	Transmission Rights Settlement Credit	$TRSC_{k,h}$	9.3.6.1	$MAX((0), (\sum_{j,i} 1/12 \times QTR_{k,h}^{i,j} \times \sum_t (EMP_h^{j,t} - EMP_h^{i,t}))$	Hourly	Due MP	0	0	0	0	
105	Congestion Management Settlement Credit for Energy	$CMSC_{k,h}$	9.3.5.2 to 9.3.5.7	$OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Subject to the mathematical sign of (DQSI-MQSI) being equal to the mathematical sign of (AQEI-MQSI). $AQEI_{k,h}^{m,t}$ and $EMP_h^{m,t}$ may be substituted with $SQEI_{k,h}^{i,t}$ and $EMP_h^{i,t}$ respectively, where the application of this equation pertains to *intertie metering point* 'i'. or $-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) - MAX(-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL), -1OP(EMP_h^{m,t}, AQEW_{k,h}^{m,t}, BL))$ Subject to the mathematical sign of (DQSW-MQSW) being equal to the mathematical sign of	Interval	Either Way	13	13	13	13	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*. Offer prices in matrix 'BE' may be revised down to a lower limit as described in 9.3.5.6. See also: description of variable 'BE' in Section 2.2. The bid prices in the matrix BL may be revised as described in

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				(AQEW-MQSW). $AQEW_{k,h}^{m,t}$ and $EMP_h^{m,t}$ may be substituted with $SQEW_{k,h}^{i,t}$ and $EMP_h^{i,t}$ respectively, where the application of this equation pertains to *intertie metering point* 'i'. or For *variable generators* that are registered *market participants* whose *registered facility* is operating under a release notification for any given *dispatch interval*, and the *facility*'s market schedule quantity is less than the corresponding quantity in the constrained schedule for the same dispatch interval as a result of the *market participant*'s offers being partially or fully uneconomic: $OPE(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE)$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.							Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.8.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
106	Congestion Management Settlement Credit for 10 Minute Spinning Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either Way	13	N/A	N/A	N/A	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.
107	Congestion Management Settlement Credit for 10 Minute Non-spinning Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either Way	13	N/A	N/A	N/A	This *charge type* holds the *market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.
108	Congestion Management Settlement Credit for 30 Minute Operating Reserve	$CMSC_{r,k,h}$	9.3.5.2	$OP(PROR_{r,h}^{m,t}, SQROR_{r,k,h}^{m,t}, BR_r) - MAX(OP(PROR_{r,h}^{m,t}, DQSR_{r,k,h}^{m,t}, BR_r), OP(PROR_{r,h}^{m,t}, AQOR_{r,k,h}^{m,t}, BR_r))$ See 9.3.5.2 for the definition of the Operating Profit (OP) function referenced above.	Interval	Either way	13	N/A	N/A	N/A	This *charge type* holds *the market participant* to the expected profits implied by the *market schedule* derived on *dispatch data* provided by that *market participant*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
111	Northern Pulp and Paper Mill Electricity Transition Program Settlement Amount	N/A	N/A	$= \sum_{M\,H}{}^{T} (AQEW_{mh}{}^{t})$ x (Tprate) Where: Tprate is the transition program rate 'M' is the set of all *delivery points* 'm' for all *market participant*-eligible *facilities*. 'H' is the set of all *settlement hours* 'h' in the settlement period. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 5 H'. 'AQEW' is limited to a maximum of 1,000,000 MWh annually per eligible *market participant*.	Quarterly	Due MP	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to Ministry of Natural Resources specifications. This program ends on September 30, 2010.
112	Ontario Power Generation Rebate	N/A	N/A	$= TD_{162}$ x $[(AQEW_{k,h}{}^{t}) / \sum_{K,H}{}^{T} (AQEW_{k,h}{}^{t})]$ Where: 'K' is the set of all Ontario *market participants* 'k' 'H' is the set of all *settlement hours* 'h' in the applicable quarter. 'T' is the set of all *metering*	May 1, 2006 to April 30, 2009	Due MP	13	N/A	N/A	N/A	The Ontario Power Generation Rebate payments will be based on the allocated quantity of *energy* withdrawn for the applicable quarter.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' in the set of all *settlement hours* 'H'.							
113	Additional Compensation for Administrative Pricing Credit	N/A	7.8.4A.16 or 7.8.4A.10 or 7.13.6.2	Manual Entry as per 7.8.4A.16, or 7.8.4A.10, or 7.13.6.2.	Monthly	Due MP	13	13	0	13	This charge will still be used for market suspension events
114	Outage Cancellation/Deferral Settlement Credit.	N/A	5.6.7.4	Manual Entry as per 5.6.7.4.	Monthly	Due MP	13	N/A	N/A	N/A	
115	Unrecoverable Testing Costs Credit	N/A	9.4.8.1.1 and4.5.3.4	Manual Entry as per 4.5.3.4.	Monthly	Due MP	13	13	13	13	
116	Tieline Maintenance Reliability Credit	N/A	9.4.8.1.2 and 5.5.3.4	Manual Entry as per 5.5.3.4.	Monthly	Due MP	13	13	13	13	
118	Emergency Energy Rebate	N/A	9.4.8.2 and 5.4.4A.1	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of *all metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due MP	13	N/A	0	13	
119	Station Service Reimbursement	N/A		$= \{TD_{C,k,h}^{m,T} \times [\sum^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,h}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}$	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Credit		9.4.8.1.6 and 9.2.1A.9 - 2.1A14	$)]\} + \{TD_{C2,k,H}^{m,T} \times [\sum_{H2}^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,H}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]\} + \{TD_{C3,k,H}^{m,T} \times [\sum_{H4}^{T2} (AQEW_{k,h}^{M,t}) / \sum_{K,H3}^{T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]\}$ Where: 'T' is the set of all *metering intervals* in *settlement hour* 'h'. 'M' is the eligible generation station service delivery point 'm' of market participant 'k' 'C' is the set of the following hourly uplift *charge type* c as follows: 150, 155, 250, 252, 254, 451 'T2' is the set of all *metering intervals* in *settlement hour* 'h' where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*. 'K' is the set of all *market participants* 'C2' is the set of the following non-hourly monthly *charge type* 'c' as follows: 163,164,165,166,167,168,169,183, 184,450,452,454,460,550,1188,							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				1650 'C3' is the set of the following daily *charge type* 'c' as follows: 1550, 1560 'H' is the set of all *settlement hours* 'h' in the *billing period* 'H2' is the set of all *settlement hours* 'h' in the *billing period* where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*. 'H3' is the set of all *settlement hours* 'h' in the day 'H4' is the set of all *settlement hours* 'h' in the day where the eligible *generation facility* was a net injector of *energy* into the *IESO-controlled grid*.							
120	Local Market Power Debit	N/A	9.4.8.2.2 and Ch. 7, Appendix 7.6		Monthly	Due *IESO*	13	13	0	13	
121	Northern Industrial Electricity Rate Program Settlement Amount	N/A	N/A	$= \sum_{M\,H}{}^{T} (AQEW_{mh}{}^{t})$ x (Rate) Where: Rate is the program rate 'M' is the set of all *delivery points*	Quarterly	Due MP	0	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to Ministry of Northern

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'm' for all *market participant*-eligible *facilities*. 'H' is the set of all *settlement hours* 'h' in the settlement period. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 5 H'.							Development, Mines and Forestry specifications.
122	Ramp Down Settlement Amount	$RDSA_{k,h}$	9.3.5A.1	Let 'BE' be a matrix of n *price-quantity pairs* offered by *market participant* 'k' to supply *energy* during the *settlement hour* immediately before the hour in which ramp-down begins, adjusted by a ramp-down factor (RDF) as specified in the applicable *market manual*. Let OP(P,Q,B) be a function of Price (P), Quantity (Q) and an n x 2 matrix (B) of offered *price-quantity pairs*: $OP(P,Q,B) = P \cdot Q - \sum_{i=1}^{s*} P_i \cdot (Q_i - Q_{i-1}) - (Q - Q_{s*}) \cdot P_{s*+1}$	Interval	Either Way	13	N/A	N/A	N/A	The RDF is defined in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.31.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: s* is the highest indexed row of BE such that $Q_{s*} \leq Q \leq Q_n$ and where, $Q_0=0$ Using the terms below, let $RDC_{k,h}^{m,t}$ be expressed as follows: $RDC_{k,h}^{m,t} = MAX[0, [OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) – MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))]]$ $RDSA_{k,h}^{m,t} = MIN(-1 \times RDCB_{k,h}^{m,t}, RDC_{k,h}^{m,t})$							
130	Intertie Offer Guarantee Settlement Credit – Energy	$IOG_{k,h}$ and $IOG_{k,h}$OFF SET	9.3.8A.1 9.3.8A.3 and 7.3.5.8.1	**<u>**CALCULATIONS FOR *CHARGE TYPE* 130 END OCTOBER 12, 2011. *CHARGE TYPE* 130 REPLACED BY**</u>	Hourly (the IOG Offset is debited)	Either Way	N/A	13	13	13	Compensation for cumulative, hourly financial losses as implied by the *market schedule* for

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				***CHARGE TYPE* 1131 EFFECTIVE OCTOBER 13, 2011.** The Intertie Offer Guarantee *settlement amount* is derived from an hourly *Energy* Import sub component ($EIM_{k,h}$) as follows: $\sum_I (-1)MIN[0, \sum^T OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE)]$ See 9.3.8A.2 for the definition of the Operating Profit (OP) function referenced above. Where 'I' is the set of relevant *intertie metering points* 'i'. Where 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'. The IOG_OFFSET component of this *charge type* applied on a monthly basis and is calculated as follows: $= DA_IOG_{k,h} + EIM_{k,h} - \sum^I(-1) * MIN[0, \sum^T OP(EMP_h^{i,t}, QSI\{adj\}_{k,h}^{i,t}, BE_{k,h}^{i,t}$ or $PDR_BE_{k,h}^{i,t}) + \sum^T QSI\{adj\}_{k,h}^{i,t} / \sum^T MI_{k,h}^{t}[n,1] * OPE'_{k,h}^{i}]$							Imports of *energy* at an *intertie metering point*. This amount is reduced by the IOG Offset when the import is part of an implied "wheeling through" transaction as described in Section 3.5.8.1 of Chapter 7.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				(See 9.3.8A.4 for the derivation of the variable $QSI\{adj\}_{k,h}^{i,t}$, $OPE'_{k,h}{}^{i}$ and the proper context of the matrix notation $MI_{k,h}^{t}[n,1]$ used above).							
133	Generation Cost Guarantee Payment	N/A	9.4.7B	Dispatchable *delivery points:* $MAX[0, (CGC + RT_COST - \sum^{T} EMP_{h}^{m,t} \times AQEI\{limited\}_{k,h}^{m,t} - - \sum^{T} CMSC_REV_{k,h}^{m,t}]$ **Subject to:** $AQEI\{limited\}_{k,h}^{m,t} = MIN[AQEI_{k,h}^{m,t}$, *minimum loading point*] Where 'CGC' is a *Submitted Combined Guaranteed Costs* variable, assessed in accordance with the applicable *market manual* (see also Section 2.1 "Variable Description"). Where 'm' is *delivery point* 'm' at which the *generation unit* incurring the relevant costs is located. Where 'T' is a set of *metering intervals* 't' from a valid start time	Hourly	MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				until the earlier of: - the end of *minimum generation block run-time;* or - the end of the unit's *minimum run-time.* Where $AQEI\{limited\}_{k,h}^{m,t}$ shall denote all allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h', up to the *generation unit's minimum loading point.* Where RT_COST is fuel and O&M cost component related to operation of the *generation unit* at its *minimum loading point* during its *minimum generation block run-time* (these costs are calculated based on the *offer* price associated with real-time dispatch). $RT_COST_k = \Sigma^{T^*}_{H1}$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				COST(AQEI{limited}$_{k,h}^{m,t}$, BE) A. Where the COST function is defined as follows: $COST(Q,B) = \sum_{i=1}^{s^*} P_i \cdot (Q_i - Q_{i-1})$ *where:* • B is the n x 2 matrix (B) of offered *price-quantity pairs* (P_i , Q_i) • s* is the highest indexed row of B such that $Q_{s^*-1} \leq Q \leq Q_{s^*}$ and where $Q_0=0$ B. Where 'H1' is the set of all settlement hours 'h' during the period from beginning of the *minimum generation block run-time* until the end of the calculated *minimum run time.* We consider that the *minimum generation block run-time* starts with the first hour after we add the submitted number of ramp intervals to the valid start-up hour.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				C. Where 'T*' is the set of *metering intervals* 't' in the set of all *settlement hours* 'H1' Where $CMSC_REV_{k,h}^{m,t}$ is any real-time $CMSC(TD_{k,h,105}^{m,t})$ payment associated with allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point.* CMSC_REV is calculated using the following rules: 1) Real-time CMSC ($TD_{k,h,105}^{m,t}$) for the same interval is greater than zero. 2) If $MQSI_{k,h}^{m,t}$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) >= MLP, then $CMSC_REV_{k,h}^{m,t} = 0$. 3) In the case of a *constrained-off event*: a. If $MQSI_{k,h}^{m,t}$ < MLP, then							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} >= MLP$ and $max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) <= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MLP, BE) - OP(EMP, max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}), BE)$. 4) In the case of a *constrained-on event*: a. If $MQSI_{k,h}^{m,t} < MLP$ and $min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} <= MLP$ and $min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) >= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_{h}^{m,t}, MLP, BE)$ (See applicable *market manual*)							
134	Demand Response Credit	N/A	9.4.7C 9.4.7F	Manual Entry for TDRP (Refer to "Market Manual 5: Settlements, Part 5.10: Transitional Demand	Monthly	Either way	13	N/A	NA	N/A	TDRP and ELRP suspended by the *IESO*.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Response Program". Manual Entry for ELRP (Refer to "Market Manual 10: Emergency Load Reduction Program (ELRP)".							
135	Real-time Import Failure Charge	$RT_IFC_{k,h}$	9.3.8C.3	$\sum^{I,T}$ (-1) * MIN[MAX[0, ($EMP_h^{m,t}$ + $PB_IM_h^t$ – $PD_EMP_h^{m,t}$) * $RT_ISD_{k,h}^{i,t}$], (MAX(0, $EMP_h^{m,t}$)* $RT_ISD_{k,h}^{i,t}$)] Where: 'I' is the set of all *intertie metering points* 'i'. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. $RT_ISD_{k,h}^{i,t}$ = MAX ($PD_DQSI_{k,h}^{i,t}$ – $DQSI_{k,h}^{i,t}$, 0)	Hourly	Due *IESO*	N/A	13	N/A	N/A	Subject to exemptions under the provisions of 9.3.8C.2.2.
136	Real-time Export Failure Charge	$RT_EFC_{k,h}$	9.3.8C.5	$\sum^{I,T}$ (-1) * MIN[MAX[0, ($PD_EMP_h^{m,t}$ – $EMP_h^{m,t}$ – $PB_EX_h^t$) * $RT_ESD_{k,h}^{i,t}$], (MAX(0, $PD_EMP_h^{m,t}$)* $RT_ESD_{k,h}^{i,t}$)] Where: 'I' is the set of all *intertie metering points* 'i' 'T' is the set of 12 *metering*	Hourly	Due *IESO*	N/A	N/A	0	13	Subject to exemptions under the provisions of 9.3.8C.4.2.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h' $RT_ESD_{k,h}^{i,t} = MAX(PD_DQSW_{k,h}^{i,t} - DQSW_{k,h}^{i,t}, 0)$							
140	Fixed Energy Rate Settlement Amount	N/A	N/A	**** *CHARGE TYPE* 140 REPLACED BY *CHARGE TYPE* 142 EFFECTIVE JANUARY 1, 2005 **** **NOTE:** The equations identified below apply to low volume and designated consumers (as defined in *Ontario Energy Board Act, 1998* and associated regulations) in the *IESO-administered market*. For *distributors, charge type* 140 is applied once a month based on the values submitted by the *distributor* on IMO_FORM_1562 (monthly adjustment) and IMO_FORM_1505 (May-Nov 2002 refund). For *IESO's* low volume and designated customers a fixed rate adjustment with a rate of 5.5 cents per kWh is applied on an interval basis using the equation below. A manual adjustment is applied at the end of the month to apply a rate of 4.7 cents per kWh for *energy* withdrawn up to 750 kWhs. **Fixed Energy Rate Settlement Amount (dispatchable locations):** **Where net uncovered consumption > 0:** $\Sigma_{T,m} (EMP_h^{m,t} - FP_h^m) \times (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t})$ **Where net uncovered consumption = 0:** $\Sigma_{T,m} (EMP_h^{m,t} - FP_h^m) \times (-AQEI_{k,h}^{m,t})$ **SUBJECT TO:**Net uncovered consumption = $MAX [\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}), 0]$	Hourly (type 'DP' records only. See: "Format Spec. for Settlement Statement Files and Data Files" for further details)	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Fixed Energy Rate Settlement Amount (non-dispatchable locations): **Where net uncovered consumption > 0:** $(HOEP_h - FP_h^m) \times \Sigma_{m,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t})$ **Where net uncovered consumption = 0:** $(HOEP_h - FP_h^m) \times \Sigma_{m,T} (- AQEI_{k,h}^{m,t})$ **SUBJECT TO:** Net uncovered consumption = MAX $[\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}),0]$ **SUBJECT TO:** Net uncovered consumption = MAX $[\Sigma_{T,m} (AQEW_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}),0]$							
141	Fixed Wholesale Charge Rate Settlement Amount	N/A	N/A	**** CALCULATIONS FOR *CHARGE TYPE* 141 END MARCH 31, 2005 **** **NOTE:** The equations identified below apply to *distributors*, low volume and designated consumers (as defined in Bill 4 and associated regulations) in *the IESO-administered market.* For *distributors* an additional *charge type* 141 record is provided to reflect any monthly submission of IMO_FORM_1562. See IMO_FORM_1562 for further details. $TD_{k,C} - \sum_{M,H} AQEW_{k,h}^{m,t} * (FPC)$ Where: 'H' is all *settlement hours* 'h' during	Monthly	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the *billing period;* and, 'C' is a designated group of *charge types* 'c' prescribed by government regulation (and associated rulings by the *Ontario Energy Board*) and consisting of the cumulative sum of the following *charge types*: **150, 155, 168, 170, 182, 183, 184, 250, 252, 254, 450, 452, 454, 550, 753, 9990**							
142	Regulated Price Plan Settlement Amount	N/A	N/A	**NOTE:** The equation identified below applies to low volume and designated consumers (as defined in *Ontario Energy Board Act, 1998* and associated regulations) in the *IESO-administered market*. For *distributors, charge type* 142 is applied once a month based on the values submitted by the *distributor* via On-line settlement forms: "Regulated Price Plan vs. Market Price – Variance for Conventional Meters", "Regulated Price Plan vs. Market Price – Variance for Smart Meters" and "Regulated Price Plan – Final Variance Settlement Amount". **Regulated Price Plan Settlement**	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government and OEB regulations.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Amount: $NEMSC_{k,H} - \{ MIN [TLQ , \sum_H^{M,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t})] \times RPP_{l=1} + MAX [0, \sum_H^{M,T} (AQEW_{k,h}^{m,t} - AQEI_{k,h}^{m,t} - \Sigma_s BCQ_{s,k,h}^{m,t}) - TLQ] \times RPP_{l=2} \}$							
143	NUG Contract Adjustment Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *OEFC* via On-line settlement form "NUG Adjustment Amount Information", subject to Regulation.	Monthly	Due *OEFC*	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
144	Regulated Nuclear Generation Adjustment Amount	N/A	N/A	**For dispatchable *delivery points*:** $(GRP - EMP_h^{m,t}) \times AQEI_{k,h}^{m,t}$ **For non-dispatchable *delivery points*:** $(GRP - HOEP_h) \times \Sigma^T AQEI_{k,h}^{m,t}$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.	Interval or Hourly	Due OPG	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
145	Regulated Hydroelectric Generation Adjustment Amount	N/A	N/A	$NEMSC_{k,H} - \{ \sum_H^{M,T} [(MWAvg_T \times GRP) + ((AQEI_{k,h}^{m,t} - AQEW_{k,h}^{m,t}) - MWAvg_T) \times EMP_h^{m,t}] \}$ Where 'M' is the set of all *delivery*	Monthly	Due OPG	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to *OEB* regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				points 'm' of OPG's regulated hydroelectric generating stations. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. 'H' is the set of all *settlement hours* 'h' in the month. MWAvg is the average hourly net energy production within a given month.							
146	Global Adjustment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 146 END DECEMBER 31, 2010. *CHARGE TYPE* 146 REPLACED BY *CHARGE TYPES* 147 AND 148 EFFECTIVE JANUARY 1, 2011.**</u> For Fort Frances Power Corporation Distribution Inc.: $\Sigma_{H,M,C}$TD x $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k} - EEQ) / (\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t} + \Sigma_{K}$	Monthly	Due MPs	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$EGEI_k$ - EEQ) For other *market participants*: $\Sigma_{H,M,C}$TD x ($\Sigma_H^{M,T}$ $AQEW_{k,h}^{m,t}$ + $EGEI_k$) / ($\Sigma_{K,H}^{M,T}$ $AQEW_{k,h}^{m,t}$ + Σ_K $EGEI_k$ - EEQ) Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'C' is the set of the following *charge types* 'c': **193, 194, 195, 197, 198, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1450, 1460, 1461, 1462 and 1464.**							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
147	Class A – Global Adjustment Settlement Amount	N/A	N/A	$\Sigma_{H,M,C}TD * PDF_{k,m,d}$ Where 'd' is the ratio of the number of days in the month the Peak Demand Factor was effective compared to the total number of days in the month and 'C' is the set of the following *charge types* 'c': **193, 194, 195, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1466, 1450, 1460, 1461, 1462, 1464, 1468, 1469, 1471, 1472, 1473, 1474.**	Monthly	Either Way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
148	Class B – Global Adjustment Settlement Amount	N/A	N/A	For Fort Frances Power Corporation Distribution Inc.: $(\Sigma_{H,M,C}TD - TD_{147})x$ $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_{k} - EEQ)$ / Class B Load For other Class B *Market Participant*s and Distributors: $(\Sigma_{H,M,C}TD - TD_{147})$ x	Monthly	Either Way	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$(\Sigma_H^{M,T} AQEW_{k,h}^{m,t} + EGEI_k - GA - AQEW_{g,k,h,M}^{m,t} - PGS_{h,M})$/ Class B Load Class B Load = $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t} + \Sigma_K EGEI_k - \Sigma_K EEQ - \Sigma_K GA - AQEW_{g,k,h,M}^{m,t} - \Sigma_K PGS_{h,M})$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'C' is the set of the following *charge types* 'c': **193, 194, 195, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1466, 1450, 1460, 1461, 1462, 1464, 1468, 1469, 1471, 1472, 1473, 1474.**							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
149	Regulated Price Plan Retailer Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement form "Retailer Payments for Contract Price vs. HOEP for Regulated Consumers with a Retail Contract".	Monthly	Due LDCs	13	N/A	N/A	N/A	Implementation details subject to government regulation.
150	Net Energy Market Settlement Uplift	N/A	9.3.9.1	$\sum_C^{M,T} TD_{k,h,c}$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$ + $RQ_{k,h}^{m,t}$) / $\sum_k^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where: 'C' is the set of the following *charge types* 'c' as follows: **100, 101, 103, 104, 1131** 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the NEMSC component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a	Hourly	Either Way	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
155	Congestion Management Settlement Uplift	N/A	9.3.5.2 and 9.3.5.7	$\sum_{c}^{M,T} TD_{k,h,(105, 106, 107, 108,122, 1050, 1051)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals*'t' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the CMSC component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly or Monthly (see 9.3.5.7)	Either Way	13	N/A	0	13	Pursuant to market rules, Section 9.3.5.7, during an interim period, the disbursements of charge type 105 amounts adjusted as per Section 9.3.5.6 may be made on a monthly basis.
161	Northern Pulp and Paper Mill Electricity Transition Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,111}$ Where 'k' is part of a subset of eligible *market participants* 'k'.	Quarterly	Due *IESO*	0	N/A	N/A	N/A	This program ends on September 30, 2010.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
162	Ontario Power Generation Rebate Debit	N/A	N/A	**<u>** CALCULATIONS FOR *CHARGE TYPE* 162 END April 30, 2009 **</u>** Payment (n) = $\sum_H$ [(HOEP$_h$ – ORL) x (ONPAO$_h$ x 0.85 – PAA) + (PAP – PAORL) x PAA)] OPG rebate (n) = Max [0, Payment (n) – Payment (n-1) + NCF (n-1)] Where: 'H' is the set of all *settlement hours* 'h' from May 1, 2006 to the end of the applicable quarter. 'n' is the current quarter. 'n-1' is the previous quarter. NCF is the negative amount carried forward and calculated as NCF (n) = Min [0, Payment (n) – Payment (n-1) + NCF (n-1)]	May 1, 2006 to April 30, 2009	Due *IESO*	N/A	N/A	N/A	N/A	The OPG rebate quarterly payment will be based on a cumulative calculation commencing May 1, 2006 to the end of each quarter less the same cumulative calculation to the end of the previous quarter. Where the payment formula results in an amount owing to OPG for any quarter, no such payment will be made to OPG and any such amount will be carried forward into subsequent quarters.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
163	Additional Compensation for Administrative Pricing Debit.	N/A	7.8.4A.16 or 7.8.4A.10 or 7.13.6.2, and 9.4.8	$\sum_{c,H}^{M,T} TD_{k,H,(113)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	This charge will still be used for market suspension events.
164	Outage Cancellation/ Deferral Debit.	N/A	5.6.7.4 and 9.4.8.1.3	$\sum_{c,H}^{M,T} TD_{k,H,(114)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* H.	Monthly	Due *IESO*	13	N/A	0	13	
165	Unrecoverable Testing Costs Debit	N/A	9.4.8.1.1 and 4.5.3.4	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
166	Tieline Reliability Maintenance Debit	N/A	9.4.8.1.2 and 5.5.3.4	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
167	Emergency Energy Debit	N/A	9.4.8.1.5 9.4.2.3A and 5.2.3.3A	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'c' is any payments made for *emergency energy* during the applicable period. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
168	TR Market Shortfall Debit	N/A	9.4.8.1.7 and 9.6.14.5.2	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement*	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				hours 'H'.							
169	Station Service Reimbursement Debit	N/A	9.4.8.1.6 and 9.2.1A.12.2 (a)	$= \sum_{H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
170	Local Market Power Rebate	N/A	9.4.8.2.2 9.4.8.2.3 9.3.8A.5 9.3.8A.6 and Ch. 7, Appendix 7.6	$= \sum_{H,C}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'c' denotes *charge type* 120 and that portion of *charge type* 130 related to the IOG OFFSET *settlement amount.* Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due MP	13	N/A	0	13	
171	Northern Industrial Electricity Rate Program Balancing	N/A	N/A	$\Sigma_K TD_{k,121}$ Where 'k' is part of a subset of	Quarterly	Due *IESO*	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			eligible *market participants* 'k'.							
183	Generation Cost Guarantee Recovery Debit	N/A	9.4.8.1.9	$= \sum_{H,C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following *charge types* 'c' as follows: **133** 'H' is the set of all *settlement hours* 'h' in the month. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	*IESO*	13	N/A	0	13	
184	Demand Response Debit	N/A	9.4.7C 9.4.7F	$\sum_{k,H,} (TD_{134}) \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'H' is all *settlement hours* 'h' during the *billing period.*	Monthly	Either way	13	N/A	0	5	TDRP and ELRP suspended by the *IESO.*
186	Intertie Failure Charge Rebate	$HUSA_{k,h}$	9.3.9.1	$\sum_{C}^{M,T} TD_{c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following *charge types* 'c' as follows:	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				135, 136, 1134, 1135, 1136 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the IFCR component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
190	Fixed Energy Rate Balancing Amount	N/A	N/A	**** *CHARGE TYPE* 190 REPLACED BY *CHARGE TYPE* 192 EFFECTIVE JANUARY 1, 2005 **** $\sum_{k,H,c} (TD_{140})$ Where: 'H' is all *settlement hours* 'h' during the *trading day* for all *trading days* during the interim period beginning December 1, 2002.	Hourly (type 'DP' records only. See: "Format Spec. for Settlement Statement Files and Data Files" for further details)	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
191	Fixed Wholesale Charge Rate Balancing Amount	N/A	N/A	**** CALCULATIONS FOR *CHARGE TYPE* 191 END MARCH 31, 2005 **** $\Sigma_{k,H,c}$ (TD_{141}) Where: 'H' is all *settlement hours* 'h' during the *billing period*.	Monthly	Either Way	N/A	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
192	Regulated Price Plan Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,142}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,142}$ is the total *settlement amount* of *charge type* 142 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
193	NUG Contract Adjustment Balancing Amount	N/A	N/A	TD_{143}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
194	Regulated Nuclear Generation Balancing Amount	N/A	N/A	TD_{144}	Interval or Hourly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
195	Regulated Hydroelectric Generation Balancing Amount	N/A	N/A	TD_{145}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to *OEB* regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
196	Global Adjustment Balancing Amount	N/A	N/A	$\Sigma_{K,}TD_{k,147,\ 148}$ -$\sum$197 Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,147,\ 148}$is the *settlement amount* of *charge type* 147 and 148 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
197	Global Adjustment - Special Programs Balancing Amount	N/A	N/A	$\Sigma_K\ TD_{k,1466}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1466}$ is the *settlement amount* of *charge type* 1466 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
198	Renewable Generation Balancing Amount	N/A	N/A	**** CALCULATIONS FOR *CHARGE TYPE* 198 END DECEMBER 31, 2010 **.** $\Sigma_K\ TD_{k,148}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,148}$ is the *settlement amount* of *charge type* 148 for the month for *market participant* 'k'.	Pending	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
199	Regulated Price Plan Retailer Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,149}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,149}$ is the *settlement amount* of *charge type* 149 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government regulation.
200	10 Minute Spinning Reserve Market Settlement Credit	ORSCk,h	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,hm,t} \times PROR_{r,hm,t}$	Interval	Due MP	13	13	N/A	N/A	
201	10 Minute Spinning Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(251)} \times [(AQEW_{k,h}^{m,t} + SQEW_h^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
202	10 Minute Non-spinning Reserve Market Settlement Credit	$ORSC_{k,h}$	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,h}^{m,t} \times PROR_{r,h}^{m,t}$	Interval	Due MP	13	13	N/A	N/A	
203	10 Minute Non-spinning Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_{c}^{M,T} TD_{k,h,(253)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} -$	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$BCQ_{s,k,h}^{m,t}$]							
204	30 Minute Operating Reserve Market Settlement Credit	$ORSC_{k,h}$	9.3.4.1	$\sum_{m,t,r} AQOR_{r,k,h}^{m,t} \times PROR_{r,h}^{m,t}$	Interval	Due MP	13	13	N/A	N/A	
205	30 Minute Operating Reserve Market Shortfall Rebate	$HUSA_h$	9.3.9.1	$\sum_{c}^{M,T} TD_{k,h,(255)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
250	10 Minute Spinning Market Reserve Hourly Uplift	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(200)}$ x [$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})$] Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$	Hourly	Due *IESO*	13	N/A	0	13	
251	10 Minute Spinning Market Reserve Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞.	Interval	Due *IESO*	13	13	N/A	N/A	
252	10 Minute Non-spinning Market Reserve	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(202)}$ x [$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}$	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Hourly Uplift			+ $RQ_{k,h}^{m,t}$) / $\sum_k^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
253	10 Minute Non-spinning Market Reserve Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞	Interval	Due *IESO*	13	13	N/A	N/A	
254	30 Minute Operating Reserve Market Hourly Uplift	$HUSA_h$	9.3.9.1	$\sum_c^{M,T} TD_{k,h,(204)}$ x [($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$ + $RQ_{k,h}^{m,t}$) / $\sum_k^{M,T}$ ($AQEW_{k,h}^{m,t}$ + $SQEW_{k,h}^{i,t}$)] Where 'T' is the set of 12 *metering*	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h'. Where $RQ_{k,h}^{m,t}$ is a reallocated quantity whereby *market participant* 'k' is a party to one or more *physical bilateral contracts* for *settlement hour* 'h' in which the *operating reserve* component of *hourly uplift* is to be reallocated between *market participant* 'k' and the other *market participant* that is a party to the contract in which: $RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$							
255	30 Minute Operating Reserve Market Shortfall Debit	$ORSSD_{k,r,h}$	9.3.8.2	Manual Entry as per 9.3.8.2 where the value below which ORESFk,r,hm,t shall be set at zero equals ∞	Interval	Due *IESO*	13	13	N/A	N/A	
400	Black Start Capability Settlement Credit	N/A	9.4.2.2	Manual Entry as per 9.4.2.2	Monthly	Due MP	13	N/A	N/A	N/A	
404	Regulation Service Settlement Credit	N/A	9.4.2.3	Manual Entry as per 9.4.2.3	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
406	Emergency Demand Response Program Credit	N/A	9.4.2.3A	Manual Entry as per 9.4.2.3A	Monthly	Due MP	N/A	N/A	N/A	N/A	EDRP no longer contracted by the *IESO*.
410	*IESO-Controlled Grid* Special Operations Credit	N/A	5.8.2.6	Manual Entry as per 5.8.2.6	Monthly	Either way	13	N/A	N/A	N/A	
450	Black Start Capability Settlement Debit	N/A	9.4.2.2	$= \sum_{H,c}^{M,T} TD_{h,(400)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,.h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
451	Hourly Reactive Support and Voltage Control Settlement Debit	N/A	9.4.2.4	$= \sum_{C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is the set of the following charge types 'c' as follows: **1401, 1402, 1404, 1405, 1451** Where 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'.	Hourly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
452	Monthly Reactive Support and Voltage Control Settlement Debit	N/A	9.4.2.4	$= \sum_{H,C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is the set of the following charge types 'c' as follows: **1403, 1406, 1407, 1408, 1409, 1417** Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
454	Regulation Service Settlement Debit	N/A	9.4.2.3	$= \sum_{H,c}^{M,T} TD_{h,(404)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
460	*IESO*-Controlled Grid Special Operations Debit	N/A	5.8.2.6	$= \sum_{H,c}^{M,T} TD_{h,(410)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all	Monthly	Either way	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				settlement hours 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.							
500	Must Run Contract Settlement Credit	N/A	9.4.2.1	Manual Entry as per 9.4.2.1	Monthly	Due MP	13	N/A	N/A	N/A	
550	Must Run Contract Settlement Debit	N/A	9.4.2.1	$= \sum_{H,c}^{M,T} TD_{h,(500)} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
600	Network Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{650})$ Where 'H' is the set of the *settlement hours* 'h' in the month during which the Network Service Demand occurs at every *delivery point* defined for Transmission Network Service charges.	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
601	Line Connection Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{651})$ Where 'H' is the set of all *settlement hours* 'h' in the month	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				during which the Line Connection Service Demand occurs at every *delivery point* defined for Transmission Line Connection Service charges.							
602	Transformation Connection Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{652})$ Where 'H' is the set of all *settlement hours* 'h' in the month during which the Transformation Connection Demand occurs at every *delivery point* defined for Transmission Transformation Connection Service charges.	Monthly	Due applicable *transmitters*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
603	Export Transmission Service Credit	N/A	9.4.1 / 9.4.3	$\sum_{k,H,c} (TD_{653}^{i})$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'i' is an *intertie metering point* 'i' where an export transaction occurred during the month Each *charge type* 603 line detail record line item is therefore totaled on the basis of TD_{653} per *intertie metering point* 'i' per month.	Monthly	Due applicable *transmitter*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
650	Network Service Charge	N/A	9.4.1 / 9.4.3	$NSD_{k,h}^{m}$ x PTS-N	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				The Billing Demand for Network Transmission Service (kW) is defined as the higher of: Transmission customer coincident peak demand (kW) in the hour of the month when the total hourly demand of all PTS customers is highest for the month; and 85% of the customer peak demand in any hour during the peak period.							Rate Order".
651	Line Connection Service Charge	N/A	9.4.1 / 9.4.3	$LCD_{k,h}^{m}$ x PTS-L Where 'h' is the *settlement hour* of the current *billing period* in which $LCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
652	Transformation Connection Service Charge	N/A	9.4.1 / 9.4.3	$TCD_{k,h}^{m}$ x PTS-T Where 'h' is the *settlement hour* of the current *billing period* in which $TCD_{k,h}^{m}$ denotes the non-coincident peak demand for the month.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to the OEB "Ontario Transmission Rate Order".
653	Export Transmission Service Charge	N/A	9.4.1 / 9.4.3	$\sum_{H}^{T} SQEW_{k,h}^{i,t}$ x ETS Where 'H' is the set of all *settlement hours* 'h' in the month.	Monthly	Due *IESO*	13	N/A	0	13	Subject to the OEB "Ontario Transmission Rate Order".

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'T' is the set of all *metering intervals* 't' during the set of *settlement hours* 'H'.							
700	Dispute Resolution Settlement Credit	N/A	3.2.7	Manual Entry as per 3.2.7	Monthly	Due MP	13	13	0	13	Note: tax would follow original disputed transaction
702	Debt Retirement Credit	N/A	9.4.6	$\Sigma_{k,H,c}\, TD_{752}$	Monthly	Due Ministry of Finance	0	N/A	N/A	N/A	Ontario Regulations 493/01 and 494/01 See Ministry of Energy website for details.
703	Rural and Remote Settlement Credit	N/A	9.4.4	Manual Entry as per Reg	Monthly	Due MP as per Reg	13	N/A	N/A	N/A	Ontario Regulation 442/01 See Ministry of Energy website for details.
704	OPA Administration Credit	N/A	N/A	$\Sigma_K\, TD_{k,754}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,754}$ is the *settlement amount* of *charge type* 754 for the month for *market participant* 'k'.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Implementation details subject to government regulation.
750	Dispute Resolution Settlement Debit	N/A	3.2.7	Manual Entry as per 3.2.7.	Monthly	Due *IESO*	13	13	0	13	Note: tax would follow original disputed transactions

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751	Dispute Resolution Board Service Debit	N/A					13	13	13	13	
752	Debt Retirement Charge	N/A	9.4.6	$AQEW_{k,h}^{m,t}$ x TP Where 'k' is part of a subset of *market participants* meeting the criteria of any government regulation defining the ultimate *consumers* of *energy*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Ontario Regulations 493/01 and 494/01 See Ministry of Energy website for details.
753	Rural and Remote Settlement Debit	N/A	9.4.4	$AQEW_{k,h}^{m,t}$ x TP	Monthly	Due *IESO*	13	N/A	N/A	N/A	Ontario Regulation 442/01 See Ministry of Energy website for details.
754	OPA Administration Charge	N/A	N/A	$\Sigma_H^T AQEW_{k,h}^{m,t}$ x TP Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. Where TP is the rate ($/MWh) for the *OPA* Administration Charge set by *OEB*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Eligibility, rates, and other implementation details subject to government regulation.
850	Market Participant Default Settlement	N/A	2.8.6	Manual Entry as per 2.8.6	Monthly	Due *IESO*	13	13	13	13	

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	Debit (recovery)										
851	Market Participant Default Interest Debit	N/A	2.8.3, 2.8.5	Manual Entry as per 2.8.3 and 2.8.5	Monthly	Due *IESO*	N/A	N/A	N/A	N/A	
900	GST/HST Credit	N/A	N/A	$\sum_C TD_{k,c}$ A summation of all Goods and Services Tax Credits or Harmonized Sales Tax Credits payable to *market participant* 'k' across all *charge types* 'c'. Where 'C' is the set of all *charge types* 'c'.		Due MP	N/A	N/A	N/A	N/A	Only appear as "SC" record types.
950	GST/HST Debit	N/A	N/A	$\sum_C TD_{k,c}$ A summation of all Goods and Services Tax Debits or Harmonized Sales Tax Debits payable *by market participant* 'k' across all *charge types* 'c'. Where 'C' is the set of all *charge types* 'c'.		Due *IESO*	N/A	N/A	N/A	N/A	Only appear as "SC" record types.
1050	Self-Induced Dispatchable Load CMSC Clawback	N/A	9.3.5.1A	**BUSINESS RULES** are used in conjunction with the definitions below to specify the criteria by which the *IESO* will recover *constrained off*	Interval	Due *IESO*	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				CMSC paid to *dispatchable load* facilities. **Business Rule 1 – Materiality:** *Constrained off* CMSC is allowed for an interval during a *constrained off* event if the total amount of CMSC paid for the trade day to that *dispatchable load* is less than $4000. The daily total includes negative CMSC. **Business Rule 2 – Non-Dispatchable Portion of Load:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the CMSC is paid for portions of the dispatch where the load has bid greater than or equal to MMCP, indicating that it is a non-dispatchable in that range. $[-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) – MAX (-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL), -1 OP(EMP_h^{m,t},AQEW_{k,h}^{m,t}, BL)] –$ $[-1OP(EMP_h^{m,t}, MQSW_{k,h}^{m,t}, BL) – MAX (-1OP(EMP_h^{m,t}, DQSW_{k,h}^{m,t}, BL),-1OP (EMP_h^{m,t},AQEW_{k,h}^{m,t}, BL), -$							

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				$1OP(EMP_h^{m,t}, MC_h^m, BL)]$ Where 'MC' is minimum consumption level and is equal to the quantity in the price quantity pair where the bidding price is MMCP (i.e., $2000). This business rule applies unless CMSC is allowed because of materiality (defined by Business Rule 1). **Business Rule 3 – Dispatch Deviation:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the current 5-minute constrained schedule exceeds the revenue meter value in the previous interval plus 2.5 minutes of ramping. This business rule applies unless CMSC is allowed because of: • Materiality (defined by Business Rule 1); or • The load has been *constrained off* economically (defined below – 'Economically *constrained off* interval'); or • Operating reserve has been							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				activated (defined below – 'Operating Reserve Activation interval'); or • The load is ramping (defined below – 'Ramping interval'); or • The load has been manually dispatched down for reliability (defined below – 'Manual Dispatch for Reliability'). **Business Rule 4 – Facility off-line or unable to follow dispatch instructions:** *Constrained off* CMSC is not allowed for an interval during a *constrained off* event if the constrained schedule is 0 MW and the consumption is less than 1 MW, or if the consumption is 0 MW. This business rule applies unless CMSC is allowed because of : • Materiality (defined by Business Rule 1); or • The load has been *constrained off* economically (defined below – 'Economically *constrained off* interval'); or • Operating reserve has been activated (defined below –							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'Operating Reserve Activation interval'); or • The load has been manually dispatched down for reliability (defined below – 'Manual Dispatch for Reliability'). In addition to the Business Rules 1 to 4 described above, *constrained off* CMSC is not allowed for hour 'h' if a *dispatchable load* changes its *energy bid* that results in a change in the *facility's market schedule* and the ramping up or down of the *dispatchable load*. **DEFINITIONS** – There are a number of definitions that are used in the specification of criteria for recovery of *constrained off* CMSC paid to dispatchable load facilities. These are: **Constrained-off event**: A *constrained off* event comprises one or more consecutive intervals where the *market schedule* is greater than the constrained schedule and the *market schedule* is greater than the actual quantity of energy withdrawn. Both conditions must exist to be considered a *constrained off* event.							The decision rule for ramping up or down is described in Market Manual 5.5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.9.3.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Economic Constrained–off interval: A *dispatchable load* is considered to be 'economically *constrained off*' in an interval if the relevant nodal price is greater than or equal to the *bid* price for either the current interval, the next interval or the previous interval. The inequality should be applied to the last MW *constrained off*. **Operating Reserve Activation Interval (ORA)**: A *dispatchable load* is considered to be dispatched in an interval as part of an activation of *operating reserve* if one or more of the following conditions exist: a. The constrained schedule is labeled with the reason code 'ORA'. b. The interval is 1-3 intervals before an interval with the 'ORA' code. c. The interval is 1-3 intervals after an interval with the 'ORA' code. **Ramping Interval**: A *generation unit* is considered to be ramping up or ramping down when the unconstrained schedule differs between consecutive hours. A							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				dispatchable load is considered to be 'ramping' in an interval if one of the following exist: a. It is one of the first 3 intervals of the second hour when ramping up. b. It is one of the last 3 intervals of the first hour when ramping down. **Manual Dispatch for Reliability**: A *dispatchable load* is considered to be a 'manually *constrained off* for reliability' if the *IESO* Control Room logs indicate that the *IESO* needed to constrain off the load for system or for local requirements.							
1051	Ramp-Down CMSC Claw Back	$RDCB_{k,h}$	9.3.5.1G	$RDCB_{k,h}^{m,t} = -1 \times TD_{k,h,105}^{m,t}$ (See applicable *market manual*)	Interval	Either Way	13	N/A	N/A	N/A	Conditions for the Ramp-Down CMSC Claw Back are described in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.31.
1130	Day-Ahead Intertie Offer	$DA_IOG_{k,h}$	9.3.8A.2A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1130 END</u>	Hourly	Due MP	N/A	13	13	13	Subject to IOG OFFSET process

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Guarantee Settlement Credit			**OCTOBER 12, 2011. *CHARGE TYPE* 1130 REPLACED BY *CHARGE TYPE* 1131 EFFECTIVE OCTOBER 13, 2011.** The Day-Ahead Intertie Offer Guarantee *settlement amount* is derived as follows: For all day-ahead import transactions other than those that are subject to a *constrained on event* in the *real-time market:* $\sum^{I}$ (-1) * MIN[0, $\sum^{T}$OP($EMP_h^{i,t}$, MIN($PDR_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $PDR_BE_{k,h}^{i,t}$) + $TD_{k,h,105}^{i}$] Or, in the case of an import transaction subject to a *constrained on event* in the *real-time market:* $\sum^{I}$ (-1) * MIN[0, $\sum^{T}$OP($EMP_h^{i,t}$, MIN($PDR_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $PDR_BE_{k,h}^{i,t}$) + $OPE\{adj\}_{k,h}^{i,t}$] See 9.3.8A.2A for the definition of the Operating Profit (OP) function referenced above. Where: 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering*							under the provisions of 9.3.8A.3 (see also, entry for *charge type* 130 for further details)

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' during *settlement hour* 'h'. $TD_{k,h,105}^{i}$ is that component of *charge type* 105 ("Congestion Management Settlement Credit for Energy") applicable to *market participant* 'k' at *intertie metering point* 'i' during *settlement hour* 'h'.							
1131	Intertie Offer Guarantee Settlement Credit	$IOG_{k,h}$	9.3.8A	The Day-Ahead Intertie Offer Guarantee *settlement amount* is derived as follows: $\sum_{I}$ MAX[0, $\sum^{T}$ (DA_IOG_COMP1 + DA_IOG_COMP2 – DA_IOG_COMP3)] Where **DA_IOG_COMP1:** -1 x OP($EMP_{h}^{i,t}$, MIN($DA_DQSI_{k,h}^{i,t}$, $DQSI_{k,h}^{i,t}$), $DA_BE_{k,h}^{i,t}$) **DA_IOG_COMP2:** $XDA_BE_{k,h}^{i,t}$ – MAX(0, $XBE_{k,h}^{i,t}$) **DA_IOG_COMP3:** Component 3 is calculated when: the CMSC for energy ($TD_{k,h,105}^{m,t}$) for the same metering interval is a value other than zero. For Component 3 (DA_IOG_COMP3), the six scenarios of the possible orderings of the	Hourly	Due MP	N/A	13	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				generator's DA_DQSI, DQSI and MQSI are as follows: 1. DQSI >= MQSI >= DA_DQSI 2. MQSI >= DQSI >= DA_DQSI 3. DQSI > DA_DQSI > MQSI 4. MQSI > DA_DQSI > DQSI 5. DA_DQSI >= DQSI > MQSI 6. DA_DQSI >= MQSI > DQSI Scenario 1 and 2: 0 Scenario 3: $OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE)$ Scenario 4: $OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, DQSI_{k,h}^{i,t}, BE)$ Scenario 5 and 6: $TD_{k,h,105}^{m,t}$ Where 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8A.2. $XDA_BE_{k,h}^{i,t} = (-1) * [OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{m,t}, DA_BE) - OP(EMP_h^{i,t}, \min(DA_DQSI_{k,h}^{m,t}, DQSI_{k,h}^{m,t}, DA_BE)]$ $XBE_{k,h}^{i,t} = (-1) * [OP(EMP_h^{i,t}, DA_DQSI_{k,h}^{i,t}, BE) - OP(EMP_h^{i,t}, \min(DA_DQSI_{k,h}^{i,t}, DQSI_{k,h}^{i,t}, BE)]$ Where $EMP_h^{i,t} = 0$ The Intertie Offer Guarantee *settlement amount* is derived from an hourly *Energy* Import sub component ($EIM_{k,h}$) as follows: $RT\text{-}IOG_{k,h} = EIM_{k,h}$ The Real-Time Intertie Offer Guarantee ($RT\text{-}IOG_{k,h}$) *settlement amount* is derived as follows: $\sum_I (-1)*MIN[0, \sum^T OP(EMP_h^{i,t}, MQSI_{k,h}^{i,t}, BE)]$ Where 'I' is the set of relevant *intertie metering points* 'i'. 'T' is the set of all *metering intervals* 't' during *settlement hour* 'h'. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8A.2. The IOG_OFFSET component of this *charge*							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				type is calculated as follows: **The Day-Ahead IOG rate:** DA_IOG_RATE = IF [DA_IOG is not NULL, DA_IOG / min(DA_DQSI, DQSI), 0] **The Real-Time IOG rate:** RT_IOG_RATE = IF[RT_IOG is NULL, 0, RT_IOG/DQSI] **The matrix is arranged in ascending order on DA_IOG_RATE and the day-ahead import quantities are offset against the day-ahead export schedule quantities:** DA_DQSW_REM = [MAX[0, DA_OFFSET_DQSW)]] DA_OFFSET_DQSW = MIN[DA_DQSI, DQSI, DA_DQSW_REM] **The day-ahead IOG offset flag:** DA_OFFSET_FLAG = IF(DA_OFFSET_DQSW > [50% X MIN(DA_DQSI,DQIS)],Y,N) **The IOG offset rate:** IOG_SETTLEMENT_RATE = IF[DA_OFFSET_FLAG = 'Y', RT_IOG_RATE, MAX(RT_IOG_RATE, DA_IOG_RATE)]							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Subject to: MI[n,9] >= MIN[n-1,9] MI[1,9] = MIN[MI[1 to N,9]] MI[1 to N,9] <> 0 **The Gross IOG amount:** IOG = IOG dollar amount associated with the used to calculate IOG_SETTLEMENT_RATE **The matrix is arranged in ascending order on IOG_SETTLEMENT_RATE and the real-time import quantities are offset against the real-time export schedule quantities:** RT_DQSW_REM = [MAX[0, DQSW – RT_OFFSET_DQSW)]] RT_OFFSET_DQSW = MIN[DQSI, RT_DQSW_REM] **The IOG offset settlement amount:** IOG_OFFSET = (IOG_SETTLEMENT_RATE * RT_OFFSET_DQSW) **The IOG settlement amount:** NET_IOG = (IOG – IOG_OFFSET)							
1133	Day-Ahead Generation Cost Guarantee	$DA_GCG_{k,h}$	9.4.7D	****CALCULATIONS FOR *CHARGE TYPE* 1133 END**	Hourly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Payment			**OCTOBER 12, 2011.** Dispatchable *delivery points:* $MAX[0, (DA_CGC + DA_COST - \sum^{T} EMP_{h}^{m,t} \times AQEI\{limited\}_{k,h}^{m,t} - \sum^{T} CMSC\ REV_{k,h,}^{m,t}]$ **Subject to:** $AQEI\{limited\}_{k,h}^{m,t} = MIN[AQEI_{k,h}^{m,t}$, *minimum loading point*] Where 'DA_CGC' is a Day-Ahead *Combined Guaranteed Costs* variable, assessed in accordance with the applicable *market manual* (see also Section 2.1 "Variable Description"). Where 'm' is *delivery point* 'm' at which the *generation unit* incurring the relevant costs is located. Where 'T' is a set of *metering intervals* 't' from a valid start time to the end of *minimum generation block run-time.* Where $AQEI\{limited\}_{k,h}^{m,t}$ shall							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				denote all allocated quantities in MWh of *energy* injected at *delivery point* 'm' irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point*. Where DA_COST is fuel and O&M cost component related to operation of the *generation unit* at its *minimum loading point* during its *minimum generation block run-time* (these costs are calculated based on the *offer* price associated with Pre-dispatch of record). $DA_COST_k = \Sigma^{T^*_{H2}} COST(AQEI\{limited\}_{k,h}^{m,t}, PDR_BE_{k,h}^{m,t})$ A. Where the COST function is defined as follows:							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$COST(Q,B) = \sum_{i=1}^{s^*} P_i \cdot (Q_i - Q_{i-1})$ *where:* • B is the n x 2 matrix (B) of offered *price-quantity pairs* (P_i , Q_i) • s* is the highest indexed row of B such that $Q_{s^*-1} \leq Q \leq Q_{s^*}$ and where $Q_0=0$ *B.* Where H2 is the set of all *settlement hours* 'h' during the period from the *Pre-dispatch of Record* 'start hour' until the end of *minimum generation block run* C. Where 'T*' is the set of metering intervals 't' in the set of all settlement hours 'H2' Where $CMSC_REV_{k,h}^{m,t}$ is any real-time $CMSC(TD_{k,h,105}^{m,t})$ payment associated with allocated quantities in MWh of *energy* injected at *delivery point* 'm'							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				irrespective of any submission of *physical allocation data* by *market participant* 'k' in metering interval 't' of *settlement* hour 'h' up to the *generation unit's minimum loading point*. CMSC_REV is calculated using the following rules: 1) Real-time CMSC ($TD_{k,h,105}^{m,t}$) for the same interval is greater than zero. 2) If $MQSI_{k,h}^{m,t}$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) >= MLP, then $CMSC_REV_{k,h}^{m,t} = 0$. 3) In the case of a *constrained-off event*: a. If $MQSI_{k,h}^{m,t} < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} >= MLP$ and max($DQSI_{k,h}^{m,t}$,$AQEI_{k,h}^{m,t}$) <= MLP, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t},MLP,BE) - OP(EMP,max(DQSI_{k,h}^{m,t},AQEI_{k,h}^{m,t}),BE)$. 4) In the case of a *constrained-*							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				on event: a. If $MQSI_{k,h}^{m,t} < MLP$ and $\min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) < MLP$, then $CMSC_REV_{k,h}^{m,t} = TD_{k,h,105}^{m,t}$ b. If $MQSI_{k,h}^{m,t} <= MLP$ and $\min(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t}) >= MLP$, then $CMSC_REV_{k,h}^{m,t} = OP(EMP_{h}^{m,t}, MQSI_{k,h}^{m,t}, BE) - OP(EMP_{h}^{m,t}, MLP, BE)$ (See applicable *market manual*)							
1134	Day-Ahead Linked Wheel Failure Charge	$DA_LWFC_{k,h}$	9.3.8E	$MAX\left[(-1) * \left[(DA_LWSD_{k,h}^{i}) * MAX[0,(DA_PS_{k,h}^{i} - PD_PS_{k,h}^{i})]\right], (RT_IFC_DALW_{k,h}^{i} + RT_EFC_DALW_{k,h}^{i})\right]$ Where: $DA_LWSD_{k,h}^{i,t} = MAX[MAX(DA_DQSI_{k,h}^{i,t} - PD_DQSI_{k,h}^{i,t}, DA_DQSW_{k,h}^{i,t} - PD_DQSW_{k,h}^{i,t}), 0]$	Hourly	Due *IESO*	N/A	13	13	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$RT_IFC_DALW_{k,h}^{i} = \sum^{I,T} (-1) * MIN\left[MAX[\ 0, (EMP_h^{m,t} + PB_IM_h^{t} - PD_EMP_h^{m,t}) * MAX\ (DA_DQSI_{k,h}^{i,t} - PD_DQSI_{k,h}^{i,t}, 0)], (MAX(0, EMP_h^{m,t}) * MAX\ (DA_DQSI_{k,h}^{i,t} - PD_DQSI_{k,h}^{i,t}, 0))\right]$ $RT_EFC_DALW_{k,h}^{i} = \sum^{I,T} (-1) * MIN\left[MAX[\ 0, (PD_EMP_h^{m,t} - EMP_h^{m,t} - PB_EX_h^{t}) * MAX\ (DA_DQSW_{k,h}^{i,t} - PD_DQSW_{k,h}^{i,t}, 0)], (MAX(0, PD_EMP_h^{m,t}) * MAX\ (DA_DQSW_{k,h}^{i,t} - PD_DQSW_{k,h}^{i,t}, 0))\right]$ Where: 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1135	Day-Ahead Import Failure Charge	$DA_IFC_{k,h}$	9.3.8B	$\sum^{I,T}$ (-1) * MIN[MAX[0, $OP(PD_EMP_h^{m,t}, DA_DQSI_{k,h}^{i,t}, DA_BE_{k,k}^{i,t})$ – $OP(PD_EMP_h^{m,t}, PD_DQSI_{k,h}^{i,t}, DA_BE_{k,k}^{i,t})$] , (MAX(0, $XPD_BE_{k,h}^{i,t}$ – $XDA_BE_{k,h}^{i,t}$)], (MAX(0, $PD_EMP_h^{m,t}$)* $DA_ISD_{k,h}^{i,t}$)] Where: 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'. $DA_ISD_{k,h}^{i,t} = MAX(DA_DQSI_{k,h}^{i,t} – PD_DQSI_{k,h}^{i,t}, 0)$ $XDA_BE_{k,h}^{i,t} = (-1) * [OP(0,DA_DQSI,DA_BE) - OP(0,PD_DQSI,DA_BE)]$ $XPD_BE_{k,h}^{i,t} = (-1) * [OP(0,DA_DQSI,PD_BE) -$	Hourly	Due *IESO*	N/A	13	N/A	N/A	Subject to exemptions under the provisions of 9.3.8B.1.2

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				OP(0,PD_DQSI,PD_BE)]							
1136	Day-Ahead Export Failure Charge	$DA_EFC_{k,h}$	9.3.8D	$\sum^{I,T}$ (-1) * MIN[MAX[0,(–1)* OP($PD_EMP_h^{m,t}$, $DA_DQSW_{k,h}^{i,t}$, $DA_BL_{k,k}^{i,t}$) – (–1)* OP($PD_EMP_h^{m,t}$, $PD_DQSW_{k,h}^{i,t}$, $DA_BL_{k,k}^{i,t}$)] , (MAX(0, $XDA_BL_{k,h}^{i,t}$ – $XPD_BL_{k,h}^{i,t}$), (MAX(0, $XDA_BL_{k,h}^{i,t}$)] Where: 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. 'T' is the set of all *metering intervals* 't' in *settlement hour* 'h'. 'I' is the set of all *intertie metering points* 'i'. $XDA_BL_{k,h}^{i,t}$ = [OP(0,DA_DQSW,DA_BL) - OP(0,PD_DQSW,DA_BL)] $XPD_BL_{k,h}^{i,t}$ = [OP(0,DA_DQSW,PD_BL) - OP(0,PD_DQSW,PD_BL)]	Hourly	Due *IESO*	N/A	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1137	Intertie Offer Guarantee Reversal	**Context 1:** IOG_REV$_{k,h}$ **Context 2:** DA_IOG$\{adj\}_{k,h}^{i}$	9.3.8A.1.2 and 9.3.8A.7 to 9.3.8A.9	****CALCULATIONS FOR *CHARGE TYPE* 1137 END OCTOBER 12, 2011.** **NOTE**: This *charge type* is used in two separate contexts as follows: **Context 1:** When a day-ahead Intertie Offer Guarantee and a real-time Intertie Offer Guarantee apply to the same import transaction, the lower of the two is reversed by this *charge type*. $-1 \times TD_{k,h,c}^{i}$ Where: 'c' is *charge type* 130 or 1130 as the case may be such that: $TD_{k,h,c}^{i} = MIN (TD_{k,h,130}^{i}, TD_{k,h,1130}^{i})$ **Context 2:** In cases where this *charge type* is used for the purposes of applying the intertie offer guarantee adjustment (DA_IOG$\{adj\}_{k,h}^{i}$), the *settlement amount* applied is DA_IOG$\{adj\}_{k,h}^{i}$ and is calculated as follows: $DA_IOG\{adj\}_{k,h}^{i} = MAX [0 , IOG_FV_{k,h}^{i} - TD_{k,h,100}^{i} - MAX(TD_{k,h,1130}^{i}, TD_{k,h,130}^{i}) - TD_{k,h,105}^{i}]$ Where: $TD_{k,h,100}^{i}$, $TD_{k,h,1130}^{i}$, $TD_{k,h,130}^{i}$ and $TD_{k,h,105}^{i}$ are the *settlement amounts* for *charge types* 100, 1130, 130 and 105	**Context 1:** Hourly **Context 2:** Hourly, but reported on the last *trading day* of the *billing period*	**Context 1:** Due *IESO* **Context 2:** Due MP	N/A	13	13	13	**Note:** Context 1 and Context 2 can both be applied to the same import.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				respectively, that are applicable to *market participant* 'k' during *settlement hour* 'h' at *intertie metering point* 'i'.							
1138	Day-Ahead Fuel Cost Compensation Credit	$DA_FCC_{k,h}$	9.4.7E	Manual entry as per 9.4.7E.2	Hourly	Due MP	13	N/A	N/A	N/A	
1139	Intertie Failure Charge Reversal	$IFC_REV_{k,h}$	9.3.8C.6	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1139 END OCTOBER 12, 2011.**</u> When a Day-Ahead Import Failure Charge and a Real-time Import Failure Charge apply to the same import transaction, the lower of the two is reversed by this *charge type*. $-1 \times TD_{k,h,c}^{i}$ Where: 'c' is *charge type* 135 or 1135 as the case may be such that: $TD_{k,h,c}^{i} = MIN(-1 \times TD_{k,h,135}^{i}, -1 * TD_{k,h,1135}^{i})$	Hourly	Due *IESO*	N/A	13	N/A	N/A	
1188	Day-Ahead Fuel Cost Compensation Debit	$DA_FCC_U_{k,h}$	9.4.8.1.12	$= \sum_{K,H,c}^{M,T} TD_c \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'c' is *charge type* 1138. 'K' is the set of all *market*	Monthly	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participants 'k'. 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i'. 'H' is the set of all *settlement hours* 'h' in the month. 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.							
1300	Capacity Based Demand Response Program Availability Payment Settlement Amount	N/A	N/A	$= HA_H \times MCMW_h \times AAR$ Where: 'AAR' means 'Adjusted Availability Rate'. 'H' is the total hours a DRMP is available in a program month. 'HA' means 'Hours of Availability'. 'MCMW' means 'Monthly Contracted MW'.	Monthly	Due MP	13	N/A	N/A	N/A	
1301	Capacity Based Demand Response Program Availability Over-Delivery Settlement Amt	N/A	N/A	$= \sum_H (CMW_h - MCMW_h) \times AODR_h$ Applicable only in response to an 'Open Standby Notification'. Where: 'AODR' means 'Availability Over-Delivery Rate'.	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'CMW' means 'Confirmed MW'. 'H' is the set of all hours 'h' in the month where the 'CMW' exceeded the 'MCMW'. 'MCMW' means 'Monthly Contracted MW'.								
1302	Capacity Based Demand Response Program Availability Set-Off Settlement Amount	N/A	N/A	The charge to a DRMP is highest of **A**, **B** or **C:** **A: Availability Set-Off (Reliability)** $= \sum_H PSO_h \times AAR \times MCMW_h$ This formula applies when the Reliability Rate for a given Demand Response Account is less than 85% during any interval of an Activation Hour, or where the Participant is not Fully Available for Curtailment. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'H' is the set of all activation hours 'h' for the activation period. 'PSO' means 'Performance Set-Off Factor' as described in the market manual. **B: Availability Set-Off (Timely**	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Confirmation) = PSO x AAR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO*. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. **C: Availability Set-Off (Low Confirmation)** = $\sum_H$ (PSO x AAR x ($MCMW_h$ – CMW) This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Confirmed Hour of the Contracted Dispatch Period. Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'CMW' has the same meaning as in CT1301. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period. 'PSO' has the same meaning as defined above.							
1303	Capacity Based Demand Response Program Utilization Payment Settlement Amount	N/A	N/A	$= [\sum_H (AAM_h \times UR_h)] - [\sum_H (NG_h \times MIN(HOEP, UR_h))]$ Where: 'AAM' (Actual Activated MWh), means the number of MWh Curtailed by a Participant when requested by the *IESO*, as measured through the use of electricity meter(s). Curtailment shall not exceed the product of the Activation MW and the activation period requested by the *IESO*, plus the lesser of an additional 15% of the	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Activation MW per hour of the activation period, OR 15 MWh per hour of the activation period. 'H' is the total hours 'h' a DRMP is activated in a program month. 'HOEP' means Hourly Ontario Energy Price. 'NG' (Net Generation), means the MWh of net electricity generated by any contributor that is a behind the meter generator. 'UR' (Utilization Rate), means the rates, expressed in $/MWh, as specified in the Demand Response Schedule.							
1304	Capacity Based Demand Response Program Utilization Set-Off Settlement Amount	N/A	N/A	The charge to a DRMP is highest of **A**, **B** or **C:** **A: Utilization Set-Off (Reliability)** $= \sum_H PSO_h \times UR \times MCMW_h$ This formula applies when the Reliability Rate for a given Demand Response Account is less than 85% during any interval of an Activation Hour. Where:	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'H' is the set of all activation hours 'h' for the activation period. 'PSO' has the same meaning as in CT 1301. 'UR' has the same meaning as in CT1303. 'MCMW' has the same meaning as in CT1300. **B: Utilization Set-Off (Timely Confirmation)** = PSO x UR x $MCMW_h$ x CDP This formula applies when the DRMP, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO*. Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'MCMW' has the same meaning as defined above.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'PSO' has the same meaning as defined above. 'UR' has the same meaning as defined above. **C: Utilization Set-Off (Low Confirmation)** $= \sum_H (PSO \times UR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the Contracted Dispatch Period. Where: 'CMW' has the same meaning as in CT1301. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period. 'MCMW' has the same meaning as defined above. 'PSO' has the same meaning as defined above. 'UR' has the same meaning as defined							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				above.							
1305	Capacity Based Demand Response Program Planned Non-Performance Event Set-Off Amt	N/A	N/A	The Planned Non-Performance Availability Set-Off applies for any day for which a participant has requested a Non-Performance Event as part of either a Single Day Non-Performance Event or a part of an Extended Period Planned Non-Performance Event. The monthly set-off calculation is the sum of all: 1. Non-Activation Day Non-Performance Availability Set-Off s and 2. Activation Day Non-Performance Availability Set-Offs. For 1.) The Non-Activation Day Non-Performance Availability Set-Off amount is: $= (AAR \times MCMW_h \times HANE_H)$ Where: 'AAR' has the same meaning as in CT1300. 'HANE' (Hours of Availability for a Non-Performance Event), represents	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the Hours of Availability for all days in the contract month for which a planned Non-Performance Event is requested and for which an Activation Notice is not received by the participant. 'MCMW' has the same meaning as in CT1300. For 2.) The Activation Day Non-Performance Availability Set-Off amount is: $= (OH \times AAR \times MCMW_h \times NEWF_H)$ Where: 'AAR' and 'MCMW' have the same meaning as in CT1300. 'OH' (Opportunity Hours), means 64 if Option A is applicable to the Demand Response Account; or 32 if Option B is applicable to the Demand Response Account. 'NEWF' (Non-Performance Event Weighting Factor), means 10%, unless the Actual Activated MWh per interval, as averaged over all of the Intervals in the Contracted Dispatch Period for the Activation, is greater							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				than or equal to the product of the Monthly Contracted MW and 1/12 of an hour in which case 'NEWF' means 50%.							
1306	Capacity Based Demand Response Program Measurement Data Set-Off Settlement Amt	N/A	N/A	= MDSF x (HA_H x $MCMW_h$ x AAR) This formula applies when the complete set of weekly measurement data for a Demand Response Account are not received as per the CBDR Processing Timelines. The formula recovers a percentage of the availability payment for the applicable week. Where: 'MDSF' (Measurement Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: • 20% for the first week that the full data remains undelivered; • 33% for the second week that the full data remains undelivered; • 50% for the third week that the full data remains undelivered ; and • 100% for the fourth week that the	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered. 'AAR', 'HA' and 'MCMW' have the same meaning as in CT1300. 'H' is the total hours a DRMP is available for the applicable week.							
1307	Capacity Based Demand Response Program Buy-Down Settlement Amount	N/A	N/A	Buy-Down means the act by the DRMP chooses to reduce its Monthly Contracted MW and/or remove up to three Daily Schedules from participation in CBDR. For the Buy-Down of Monthly Contracted MW the payment is: = (MCMWR x BDR x HAE) Where: 'MCMWR' (Monthly Contracted MW Reduction), means the MW of demand reduction in the Monthly Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'HAE' (Hours of Availability Elapsed), means the number of Hours of Availability that have elapsed in the Schedule Term up to the date that the reduction takes effect.	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For the Buy-Down of the Daily Schedules the payment is: = (MCMW x RD x BDR x HAE) Where: 'BDR' has the same meaning as defined above. 'HAE' has the same meaning as defined above. 'MCMW' has the same meaning as in CT1300. 'RD' (Requested Days), means the number of Business Days per week from which the Hours of Availability are to be removed.							
1308	Capacity Based Demand Response Program Performance Breach Settlement Amount	N/A	N/A	Performance breach amounts are calculated as defined in the market manual.	Monthly	Either way	13	N/A	N/A	N/A	
1309	Demand Response Pilot – Availability Payment	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Demand Response Pilot

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1310	Demand Response Pilot – Availability Clawback	N/A	N/A	Calculated as per demand response pilot contracts.	Hourly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1311	Demand Response Pilot – Availability Charge	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1312	Demand Response Pilot – Availability Adjustment	N/A	N/A	Calculated as per demand response pilot contracts.	Monthly	Due IESO	13	N/A	N/A	N/A	Demand Response Pilot
1313	Demand Response Pilot – Demand Response Bid Guarantee	N/A	N/A	Calculated as per demand response pilot contracts. **Notes:** - Bid guarantee as a payment is Due MP; bid guarantee as a clawback is Due IESO. Bid guarantee is calculated per unit commitment period/event.	Monthly	Either Way	13	N/A	N/A	N/A	Demand Response Pilot
1314	Demand Response Capacity Obligation – Availability Payment	N/A	N/A	$\sum_d^n DRCO_k$ x DRACP Where 'd' is a *business day* as defined in the Market Rules Chapter 11. Where'n' is the number of	Monthly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				business days in the month in which the *settlement* is for.							
1315	Demand Response Capacity Obligation – Availability Charge	N/A	N/A	$\sum_h^n$ (-1) x Max(0, $DRCO_k$ - $DREBQ_h$) x $DRACP_h$ x $DRNPF_h$ Where'h' is an hour within the hours of availability for the day. Where 'n' is the number of hours of availability for the day.	Daily	Due IESO	13	N/A	N/A	N/A	
1316	Demand Response Capacity Obligation – Administration Charge	N/A	N/A	(-1) x Availability $Payment_m$ Where 'm'is the month that is being settled. Where 'Availability Payment' is the *settlement amount* calculated for CT1314.	Monthly	Due IESO	13	N/A	N/A	N/A	
1317	Demand Response Capacity Obligation – Dispatch Charge	N/A	N/A	(-1) x $DRSQty_h$ x $DRACP_h$ x $DRNPF_h$ Where 'h' is an hour in which the *hourly demand response* resource failed to follow its *dispatch* instruction.	Hourly	Due IESO	13	N/A	N/A	N/A	
1318	Demand Response Capacity Obligation –	N/A	N/A	(-1) x Availability $Payment_m$ Where 'm' is the month that is	Monthly	Due IESO	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Capacity Charge			being settled. Where 'Availability Payment' is the *settlement amount* as calculated for CT1314.							
1319	Demand Response Capacity Obligation – Buy-Out Charge	N/A	N/A	$=50\% \times \sum_{d}^{n} DRBOC_k \times DRACP \times (1 - DRNPF_m)$ Where 'd' is a *business day* as defined in the Market Rules Chapter 11. Where 'n' is the range of *business days* from the buy-out effective date to the end of the *commitment period*. Where 'm' is the month that corresponds to the *business day*.	Monthly	Due IESO	13	N/A	N/A	N/A	
1330	On behalf of the former OPA for the DR2 Program - Availability Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1330 ENDED ON FEBRUARY 28, 2015.**</u> $= \sum_{H} CoMW_h \times AR \times ILSR$ Where: 'CoMW' (Contracted MW), means the MW specified in the DR2	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Schedule(s) for a given Settlement Account which the Participant agrees to Load Shift in each On-Peak Contract hour. 'AR' (Availability Rate), means the availability rate, expressed in $/MW, in the amount as specified by the OPA from time to time on the OPA Website pursuant to the DR2 Program Rules. 'H' is the total On-Peak contract hours in a Contract Month. 'ILSR' (Implied Load Shift Ratio), has the meaning as defined in OPA's DR2 Program Rules and is calculated as follows: ILSR = (-1) x [Implied Load Shift - ((3/4)(Load Shift Credit))] / Implied Load Shift Requirement							
1331	On behalf of the former OPA for the DR2 Program - Availability Set-Off Settlement	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1331 ENDED ON FEBRUARY 28, 2015.**</u> The charge to a DR participant is	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* Program Rules. The DR2 program was last settled on the February 2015 settlement statements and

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			the highest of amounts A, B or C plus amount D; where A, B and C cannot occur within an on-peak period that was subject to D. **A: Availability Set-Off (Reliability)** $= \sum_H PSO_h \times AR \times CoMW_h \times ILSR$ This formula applies when the Actual MW Reliability Ratio for a given Settlement Account is less than 95% during the Summer and Winter seasons and less than 90% during the shoulder seasons. The Actual MW Reliability Ratio, which shall not be greater than 100%, shall be calculated as follows: - For each On-Peak Contract Hour, the Actual MW Reliability Ratio is defined as the result of the baseline MW minus the actual MW divided by the confirmed MW. 'PSO' (Performance Set-Off							invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Factor) refers to a set of factors defined in the OPA DR2 Program Rules. 'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours 'h' in the On-Peak Contract period where the required reliability is not met. 'ILSR' has the same meaning as in CT1330. **B: Availability Set-Off (Timely Confirmation)** = PSO x AR x $CoMW_h$ x H x ILSR This formula applies when the Participant has failed to deliver, or delivers late, a Confirmation that is required by the IESO pursuant to the DR2 Program Rules. Where: 'PSO' has the same meaning as defined above.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours in the On-Peak Contract period. 'ILSR' has the same meaning as in CT1330. **C: Availability Set-Off (Low Confirmation)** $= \sum_H PSO \times AR \times (CoMW_h - CMW) \times ILSR$ This formula applies when the Confirmed MW is less than the product of the Required Reliability Ratio and the Contracted MW for one or more On-Peak Contract hours. Where: 'PSO' has the same meaning as defined above. 'AR' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'CoMW' has the same meaning as in CT1330. 'CMW' (Confirmed MW) means the number of MW available to shift by the Participant. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are: - Less than 95% during the Summer and Winter seasons or - Less than 90% during the shoulder seasons of the Contracted MW. 'ILSR' has the same meaning as in CT1330. **D: Availability Set-Off (Non-Performance)** $= PSO \times AR \times CoMW_h \times H \times ILSR$ This formula applies when the Participant has taken an Extended Planned Non-Performance Event or Single Day Planned Non-							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Performance Event. Where: 'PSO' has the same meaning as defined above. 'AR' has the same meaning as in CT1330. 'CoMW' has the same meaning as in CT1330. 'H' is the set of all hours in the On-Peak Contract period. 'ILSR' has the same meaning as in CT1330.							
1332	On behalf of the former OPA for the DR2 Program - Utilization Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1332 ENDED ON FEBRUARY 28, 2015.**</u> The monthly Utilization Payment to a DR2 participant is the sum of the weekly utilization payments for the contract month and calculated as follows: Weekly Utilization payment	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_P \text{Max}[(\text{GHDiff} - \text{AHDiff}),0] \times \text{Min}[(\text{CoMWh} \times 1.15),(\text{Curt}_p)] \times \text{ILSR}$ Where: 'GHDiff' (Guaranteed weekly HOEP Differential), means the weekly differential rate, expressed in $/MWh, as specified by the *OPA* 'AHDiff' (Actual weekly HOEP Differential), is equal to the average actual HOEP for all hours of the useable On-Peak Contract Periods in the Week less the average actual HOEP for all hours in the Off-Peak Period for the same Week. 'CoMWh' (Contracted MWh), means the MWh specified in the DR2 Schedule(s) for a given Settlement Account which the Participant agrees to Load Shift in each On-Peak Contract Period. 'Curt' (Curtailment), means the number of MWh Curtailed by a Participant for each useable on-							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				peak contract period, and shifted to the off-peak period as measured through the use of electricity meter(s). 'P' is the total number of On-Peak Contract Periods 'p' for a Participant in a Contract Week 'ILSR' has the same meaning as in CT1330.							
1333	On behalf of the former OPA for the DR2 Program - Utilization Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1333 ENDED ON FEBRUARY 28, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C** where A, B and C cannot occur within an on-peak period that was subject to an Availability Set-Off (Non-Performance) event: **A: Utilization Set-Off (Reliability)**	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_P$ PSO x Max[(GHDiff – AHDiff),0] x $CoMWh_p$ x ILSR This formula applies when the Actual MWh Reliability Ratio for a given Settlement Account is less than 95% during the Summer and Winter seasons and less than 90% during the shoulder seasons. The Actual MWh Reliability Ratio, which shall not be greater than 100%, shall be calculated as follows: - For each On-Peak Contract Period, the Actual MWh Reliability Ratio is defined as the result of the baseline MWh minus the actual MWh divided by the product of the confirmed MW and the On-Peak Contract Hours. Where: 'PSO' (Performance Set-Off Factor) refers to a set of factors							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				defined in the *OPA's* Program Rules. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'P' is the total number of On-Peak Contract Periods 'p' for a Participant in a Contract Month. 'ILSR' has the same meaning as in CT1330. **B: Utilization Set-Off (Timely Confirmation)** $= \sum_P PSO \times Max[(GHDiff - AHDiff),0] \times CoMWh_p \times ILSR$ This formula applies when the Participant has failed to deliver, or delivers late, a Confirmation that is required by the IESO pursuant to the DR2 Program Rules.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'PSO' has the same meaning as defined above. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'P' is the total such On-Peak Contract Periods 'p' for a Participant in a Contract Month when the Participant has failed to deliver, or delivers late, a Confirmation. 'ILSR' has the same meaning as in CT1330. **C: Utilization Set-Off (Low Confirmation)** $= \sum_P$ PSO x Max[(GHDiff –							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				AHDiff),0] x (CoMWh – $CMWh_p$) x ILSR This formula applies when the Confirmed MWh are less than the product of the Required Reliability Ratio and the Contracted MWh for an On-Peak Contract Period. Where: 'PSO' has the same meaning as defined above. 'GHDiff' has the same meaning as in CT1332. 'AHDiff' has the same meaning as in CT1332. 'CoMWh' has the same meaning as in CT1332. 'CMWh' (Confirmed MWh) means the MWh available confirmed for shifting by the Participant. 'P' is the total such On-Peak Contract Periods 'p' for a Participant in a Contract Month. 'ILSR' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1334	On behalf of the former OPA for the DR2 Program – Meter Data Set-Off Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1334 ENDED ON FEBRUARY 28, 2015.</u> $= MDSF \times (TD_{k,1330} / NoW_k)$ This formula applies when the complete set of weekly meter data for a Settlement Account is not received by 15:00 EST on the first Business Day of the following week. The formula recovers a percentage of the Availability Payment, as pro-rated for that week in question. Where: 'MDSF' (Meter Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: - 20% for the first week that the full data remains undelivered; - 33% for the second week that the full data remains undelivered; - 50% for the third week that the	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered ; and - 100% for the fourth week that the full data remains undelivered. $TD_{k,1330}$ is the *settlement amount* of *charge type* 1330 for month 'k' for the DR2 participant. 'NoW' (Number of Weeks) means the number of Weeks contained in the Contract month. 'k' is the Contract month.							
1335	On behalf of the former OPA for the DR2 Program - Buy-Down Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1335 ENDED ON FEBRUARY 28, 2015.**</u> Buy-Down means the act by the Participant of reducing its Contracted MW and/or the number of On-Peak Contract hours from participation in DR2. For the Buy-Down of Seasonal Contracted MW the payment is: = (SCMWR x BDR x CHE)	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'SCMWR' (Seasonal Contracted MW Reduction), means the MW of demand reduction in the Seasonal Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'CHE' (on-peak Contract Hours Elapsed), means the number of On-Peak Contract Hours that have elapsed in the Schedule Term up to the date that the reduction takes effect. For the Buy-Down of the number of On-Peak Contract hours, the payment is: = (CoMW x PRCH x BDR x CHE) Where: 'CoMW' has the same meaning as in CT1330.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'PRCH' (Percent Reduction in Contract Hours), means the percent reduction in On-Peak Contract Hours requested. 'BDR' has the same meaning as defined above. 'CHE' has the same meaning as defined above.							
1336	On behalf of the former OPA for the DR2 Program - Miscellaneous Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1336 ENDED ON FEBRUARY 28, 2015.</u> Reserved for DR2 payments or charges of a miscellaneous nature not specifically covered under Charge Types 1330 through 1335.	Monthly	Due DR2-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1340	On behalf of the former OPA for the DR3 Program – Availability Payment Settlement Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1340 ENDED ON APRIL 30, 2015.</u> $= HA_H \times MCMW_h \times AAR$ Where: 'HA' (Hours of Availability), means those hours within which a Participant shall maintain a	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Contracted Dispatch Period to be available for potential Curtailment of that Participant's Monthly Contracted MW. 'MCMW' (Monthly Contracted MW), means the MW of demand reduction capacity for a specific Contract Month as identified in one or more DR3 Contact Schedule(s). 'AAR' (Adjusted Availability Rate), means an amount equal to the Availability Rate, expressed in $/MWh, as increased by the Availability Premium or as decreased by the Availability Discount, as the case may be. 'H' is the total hours a Participant is available in a Contract Month.							
1341	On behalf of the former OPA for the DR3 Program – Availability Over-Delivery Settlement Amt	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1341 ENDED ON APRIL 30, 2015.**</u> $= \sum_H (CMW_h - MCMW_h) \times AODR_h$ Applicable only in response to an	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				open standby notification. Where: 'CMW' (Confirmed MW), means the number of MW available for Curtailment by the Participant. 'CMW' is limited to the lesser of the Monthly Contracted MW plus 15 MW and 130% of the Monthly Contracted MW. 'MCMW' has the same meaning as in CT1340. 'AODR' (Availability Over-Delivery Rate), means the over-delivery rate as specified by the *OPA*. 'H' is the set of all hours 'h' in the Contract month where the 'CMW' exceeded the 'MCMW'.							
1342	On behalf of the former OPA for the DR3 Program – Availability Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1342 ENDED ON APRIL 30, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C:** **A: Availability Set-Off (Reliability)**	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$= \sum_H PSO_h \times AAR \times MCMW_h$ This formula applies when the Reliability Rate for a given Settlement Point is less than 85% during any meter interval of an Activation Hour, or where the Participant is not Fully Available for Curtailment as defined in the *OPA* DR3 Program Rules. Where: For each metered interval, the Reliability Rate at a settlement point is defined as the actual reduction divided by the requested reduction; however the Reliability Rate cannot exceed 100%. 'PSO' (Performance Set-Off Factor) refers to a set of factors defined in the *OPA* DR3 Program Rules. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'H' is the set of all activation hours 'h' for the activation period. **B: Availability Set-Off (Timely Confirmation)** = PSO x AAR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO* pursuant to the DR3 Program Rules. Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. 'AAR' has the same meaning as in CT1340.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'MCMW' has the same meaning as in CT1340. **C: Availability Set-Off (Low Confirmation)** $= \sum_H (PSO \times AAR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the Contracted Dispatch Period. Where: 'PSO' has the same meaning as defined above. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'CMW' has the same meaning as in CT1341. 'H' is the set of all confirmed hours 'h' when the Confirmed							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period.							
1343	On behalf of the former OPA for the DR3 Program – Utilization Payment Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1343 ENDED ON APRIL 30, 2015.**</u> $= [\sum_H (Curt_h \times UR_h)] - [\sum_H (NG_h \times MIN(HOEP, UR_h))]$ Where: 'Curt' (Curtailment), means the number of MWh Curtailed by a Participant when requested by the *IESO*, as measured through the use of electricity meter(s). Curtailment shall not exceed the product of the Activation MW and the activation period requested by the *IESO*, plus the lesser of an additional 15% of the Activation MW per hour of the activation period, OR 15 MWh per hour of the activation period. 'UR' (Utilization Rate), means the rates, expressed in $/MWh, as	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				specified by the *OPA*. 'NG' (Net Generation), means the MWh of net electricity generated by any contributor that is a behind the meter generator. 'H' is the total hours 'h' a Participant is activated in a Contract Month.							
1344	On behalf of the former OPA for the DR3 Program – Utilization Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1344 ENDED ON APRIL 30, 2015.**</u> The charge to a DR participant is highest of **A**, **B** or **C:** **A: Utilization Set-Off (Reliability)** $= \sum_H PSO_h \times UR \times MCMW_h$ This formula applies when the Reliability Rate for a given Settlement Point is less than 85% during any meter interval of an Activation Hour. Where: For each metered interval, the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Reliability Rate at a settlement point is defined as the actual reduction divided by the requested reduction; however the Reliability Rate cannot exceed 100%. 'PSO' (Performance Set-Off Factor) refers to a set of factors defined in the *OPA's* Program Rules. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340. 'H' is the set of all activation hours 'h' for the activation period. **B: Utilization Set-Off (Timely Confirmation)** = PSO x UR x $MCMW_h$ x CDP This formula applies when the Participant, regardless of Activation, has failed to deliver, or delivers late, a Confirmation that is required by the *IESO* pursuant to the DR3 Program Rules.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where: 'CDP' (Contracted Dispatch Period) means four consecutive hours. Each Contracted Dispatch Period shall occur within the hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule. 'PSO' has the same meaning as defined above. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340 **C: Utilization Set-Off (Low Confirmation)** $= \sum_H (PSO \times UR \times (MCMW_h - CMW)$ This formula applies when the Confirmed MW's are less than 95% of the Monthly Contracted MW for a Confirmed Hour of the							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Contracted Dispatch Period. Where: 'PSO' has the same meaning as defined above. 'UR' has the same meaning as in CT1343. 'MCMW' has the same meaning as in CT1340. 'CMW' has the same meaning as in CT1341. 'H' is the set of all confirmed hours 'h' when the Confirmed MW's are less than 95% of the Monthly Contracted MW for the Contracted Dispatch Period.							
1345	On behalf of the former OPA for the DR3 Program – Planned Non-Performance Event Set-Off Amt	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1345 ENDED ON APRIL 30, 2015.**</u> The Planned Non-Performance Availability Set-Off applies for any day for which a participant has requested a Non-Performance Event as part of either a Single Day Non-Performance Event or a	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				part of an Extended Period Planned Non-Performance Event. The monthly set-off calculation is the sum of all: 1. Non-Activation Day Non-Performance Availability Set-Off s and 2. Activation Day Non-Performance Availability Set-Offs. For 1.) The Non-Activation Day Non-Performance Availability Set-Off amount is: $= (AAR \times MCMW_h \times HANE_H)$ Where: 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'HANE' (Hours of Availability for a Non-Performance Event), represents the Hours of Availability for all days in the contract month for which a planned Non-Performance Event is							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				requested and for which an Activation Notice is not received by the participant. For 2.) The Activation Day Non-Performance Availability Set-Off amount is: = (OH x AAR x $MCMW_h$ x $NEWF_H$) Where: 'OH' (Opportunity Hours), means 64 if Option A is applicable to the Settlement Account; or 32 if Option B is applicable to the Settlement Account. 'AAR' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'NEWF' (Non-Performance Event Weighting Factor), means 50%, if the Actual Activated MWh per interval, as averaged over all of the Intervals in the Contracted Dispatch Period for the Activation, is greater than or equal to the							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				product of the Monthly Contracted MW and 1/12 of an hour; or 100% otherwise.							
1346	On behalf of the former OPA for the DR3 Program – Meter Data Set-Off Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1346 ENDED ON APRIL 30, 2015.**</u> = MDSF x (HA_H x $MCMW_h$ x AAR) This formula applies when the complete set of weekly meter data and proof of any Forced Outage(s) for a Settlement Account is not received by 15:00 EST on the first Business Day of the following week. The formula recovers a percentage of the availability payment for the applicable week. Where: 'MDSF' (Meter Data Set-Off Factor), is an increasing factor for every week that the full data remains undelivered. The factor is equal to: - 20% for the first week that the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				full data remains undelivered; - 33% for the second week that the full data remains undelivered; - 50% for the third week that the full data remains undelivered ; and - 100% for the fourth week that the full data remains undelivered. 'HA' has the same meaning as in CT1340. 'MCMW' has the same meaning as in CT1340. 'AAR' has the same meaning as in CT1340. 'H' is the total hours a Participant is available for the applicable week.							
1347	On behalf of the former OPA for the DR3 Program – Buy-Down Settlement	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1347 ENDED ON APRIL 30, 2015.**</u> Buy-Down means the act by the	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			Participant of reducing its Monthly Contracted MW and/or removing Daily Schedules from participation in DR3. For the Buy-Down of Monthly Contracted MW the payment is: = (MCMWR x BDR x HAE) Where: 'MCMWR' (Monthly Contracted MW Reduction), means the MW of demand reduction in the Monthly Contracted MWs. 'BDR' (Buy-Down Rate), means the Buy-Down Rate, expressed in $/MW. 'HAE' (Hours of Availability Elapsed), means the number of Hours of Availability that have elapsed in the Schedule Term up to the date that the reduction takes effect. For the Buy-Down of the Daily Schedules the payment is:							invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				= (MCMW x RD x BDR x HAE) Where: 'MCMW' has the same meaning as in CT1340. 'RD' (Requested Days), means the number of Business Days per week from which the Hours of Availability are to be removed. 'BDR' has the same meaning as defined above. 'HAE' has the same meaning as defined above.							
1348	On behalf of the former OPA for the DR3 Program – Miscellaneous Settlement Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1348 ENDED ON APRIL 30, 2015.**</u> Reserved for DR3 payments or charges of a miscellaneous nature not specifically covered under Charge Types 1340 through 1347.	Monthly	Due DR3-participants Either way	13	N/A	N/A	N/A	Former *OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1350	Capacity Based Recovery Amount for Class A Loads	N/A	N/A	$\Sigma_{H,M,C}TD * PDF_{k,m,d}$ Where: 'd' is the ratio of the number of days in the month the Peak Demand Factor was effective compared to the total number of days in the month. 'C' is the set of the following *charge types* 'c': 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307,1308, 1309, 1310, 1311, 1312, 1313 and 1314 to 1319.	Monthly	Due IESO	13	N/A	N/A	N/A	See comments under charge type 147
1351	Capacity Based Recovery Amount for Class B Loads	N/A	N/A	For Fort Frances Power Corporation Distribution Inc.: $(\Sigma_{H,M,C}TD - TD_{1350}) \times$ $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_k - EEQ)$ / Class B Load For other Class B *Market Participants* and Distributors: $(\Sigma_{H,M,C}TD - TD_{1350}) \times$ $(\Sigma_{H}^{M,T} AQEW_{k,h}^{m,t} + EGEI_k - GA - AQEW_{g,k,h,M}^{m,t} - PGS_{h,M})$ / Class B Load Where: Class B Load = $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t}$	Monthly	Due IESO	13	N/A	N/A	N/A	See comments under charge type 148

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				+ Σ_K EGEI$_k$ - Σ_K EEQ - Σ_K GA– AQEW$_{g,k,h,M}^{m,t}$ - Σ_K PGS$_{h,M}$) 'H' is the set of all *settlement hours* 'h' in the month. 'K' is the set of all *market participants* 'k'. 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. 'C' is the set of the following *charge types* 'c': 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307 and 1308, 1309, 1310, 1311, 1312 and 1313 and 1314 to 1319.							
1380	Demand Response 2 Availability Payment Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1380 ENDED ON FEBRUARY 28, 2015.**</u> Σ_KTD$_{k,1330}$ Where 'K' is the set of all DR2 participants 'k'. Where TD$_{k,1330}$ is the *settlement amount* of *charge type* 1330 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1381	Demand Response 2 Availability	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1381 ENDED**	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Set-Off Balancing Amount			**ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1331}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1331}$ is the *settlement amount* of *charge type* 1331 for the month for DR2 participant 'k'.							program was last settled on the February 2015 settlement statements and invoice.
1382	Demand Response 2 Utilization Payment Balancing Amount	N/A	N/A	****CALCULATIONS FOR *CHARGE TYPE* 1382 ENDED ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1332}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1332}$ is the *settlement amount* of *charge type* 1332 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	Former *OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1383	Demand Response 2 Utilization Set-Off Balancing Amount	N/A	N/A	****CALCULATIONS FOR *CHARGE TYPE* 1383 ENDED ON FEBRUARY 28, 2015.** $\Sigma_K TD_{k,1333}$	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1333}$ is the *settlement amount* of *charge type* 1333 for the month for DR2 participant 'k'.							
1384	Demand Response 2 Meter Data Set-Off Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1384 ENDED ON FEBRUARY 28, 2015.</u> $\Sigma_K TD_{k,1334}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1334}$ is the *settlement amount* of *charge type* 1334 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1385	Demand Response 2 Buy-Down Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1385 ENDED ON FEBRUARY 28, 2015.</u> $\Sigma_K TD_{k,1335}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1335}$ is the *settlement amount* of *charge type* 1335 for	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the month for DR2 participant 'k'.							
1386	Demand Response 2 Miscellaneous Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1386 ENDED ON FEBRUARY 28, 2015.**</u> $\Sigma_K TD_{k,1336}$ Where 'K' is the set of all DR2 participants 'k'. Where $TD_{k,1336}$ is the *settlement amount* of *charge type* 1336 for the month for DR2 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR2 Contract. The DR2 program was last settled on the February 2015 settlement statements and invoice.
1390	Demand Response 3 Availability Payment Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1390 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1340}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1340}$ is the *settlement amount* of *charge type* 1340 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1391	Demand Response 3 Availability Over-Delivery Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1391 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1341}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1341}$ is the *settlement amount* of *charge type* 1341 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1392	Demand Response 3 Availability Set-Off Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1392 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1342}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1342}$ is the *settlement amount* of *charge type* 1342 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1393	Demand Response 3 Utilization Payment	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1393 ENDED ON APRIL 30, 2015.</u>	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR3 Contract. The DR3 program was last settled

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Balancing Amount			$\Sigma_K TD_{k,1343}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1343}$ is the *settlement amount* of *charge type* 1343 for the month for DR3 participant 'k'.							on the April 2015 settlement statements and invoice.
1394	Demand Response 3 Utilization Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1394 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1344}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1344}$ is the *settlement amount* of *charge type* 1344 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1395	Demand Response 3 Planned Non-Event Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1395 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1345}$	Monthly	Due *OPA*	0	N/A	N/A	N/A	*FormerOPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1345}$ is the *settlement amount* of *charge type* 1345 for the month for DR3 participant 'k'.							
1396	Demand Response 3 Meter Data Set-Off Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1396 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1346}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1346}$ is the *settlement amount* of *charge type* 1346 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1397	Demand Response 3 Buy-Down Balancing Amount	N/A	N/A	**<u>**CALCULATIONS FOR *CHARGE TYPE* 1397 ENDED ON APRIL 30, 2015.**</u> $\Sigma_K TD_{k,1347}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1347}$ is the *settlement amount* of *charge type* 1347 for	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				the month for DR3 participant 'k'.							
1398	Demand Response 3 Miscellaneous Balancing Amount	N/A	N/A	**<u>CALCULATIONS FOR *CHARGE TYPE* 1398 ENDED ON APRIL 30, 2015.</u> $\Sigma_K TD_{k,1348}$ Where 'K' is the set of all DR3 participants 'k'. Where $TD_{k,1348}$ is the *settlement amount* of *charge type* 1348 for the month for DR3 participant 'k'.	Monthly	Due *OPA*	0	N/A	N/A	N/A	*Former OPA* DR3 Contract. The DR3 program was last settled on the April 2015 settlement statements and invoice.
1400	OPA Contract Adjustment Settlement Amount	N/A	N/A	Manual entry based on the values submitted by the former *OPA* via On-line settlement form "Global Adjustment Amount Information", subject to Regulation.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Implementation details subject to government regulation
1401	Incremental Loss Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due *MP*	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1402	Hourly Condense System Constraints Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1403	Speed-no-load Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1404	Condense Unit Start-up and OM&A Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1405	Hourly Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1406	Monthly Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1407	Condense Transmission Tariff Reimbursement Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1408	Condense Availability Cost Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1409	Monthly Condense System Constraints Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1410	Renewable Energy Standard Offer Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement forms: "Licenced Distributor Claims for the Renewable Energy Standard Offer Program" and "Embedded Distributor Claims for the Renewable Energy Standard Offer Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1411	Clean Energy Standard Offer Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via future On-line settlement form "Clean Energy Standard Offer Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1412	Feed-In Tariff Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via On-line settlement form "Feed-In Tariff Program".	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1413	Renewable Generation Connection – Monthly Compensation Settlement Credit	N/A	N/A	Manual entry based on the values submitted by the OEB.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	Recipients, compensation amounts and other implementation details subject to OEB regulation.
1414	Hydroelectric Contract Initiative Settlement	N/A	N/A	Manual entry based on the values submitted by the *market participant*.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount										
1415	Conservation Assessment Recovery	N/A	N/A	$\Sigma_{H,M,}$ TD x ($\Sigma_{H}^{M,T}$ $AQEW_{k,h}^{m,t}$ / ($\Sigma_{K,H}^{M,T}$ $AQEW_{k,h}^{m,t}$) Where 'H' is the set of all *settlement hours* 'h' in the year 2009. Where 'K' is the set of all non-LDC load *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where 'TD' equals the value assessed by the *OEB*.	Monthly	Due Non-LDC Load	13	N/A	N/A	N/A	Implementation details subject to government regulation.
1416	Conservation and Demand Management – Compensation Settlement Credit	N/A	N/A	Manual entry based on the values submitted by the OEB and/or as stipulated by contracts held with the IESO.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1417	Daily Condense Energy Costs Settlement Credit	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Monthly	Due MP	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1418	Biomass Non-Utility Generation	N/A	N/A	Manual entry based on the values submitted by *market participants*	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Contracts Settlement Amount			via IESO portal.							
1419	Energy from Waste (EFW) Contracts Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via IESO portal.	Monthly	Due LDCs Either way	13	N/A	N/A	N/A	
1420	Ontario Electricity Support Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via *IESO* portal	Monthly	Due LDCs, USMPs and service providers	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 314/15
1421	Capacity Agreement Settlement Credit	N/A	N/A	Calculated as per capacity contracts.	Monthly	Either way	13	13	N/A	13	
1422	Capacity Agreement Penalty Settlement Amount	N/A	N/A	Calculated as per capacity contracts.	Monthly	Either way	13	13	N/A	13	
1423	Energy Sales Agreement Settlement Credit	N/A	N/A	Calculated as per energy sales contracts.	Monthly	Either way	13	13	N/A	13	
1424	Energy Sales Agreement Penalty Settlement Amount	N/A	N/A	Calculated as per energy sales contracts.	Monthly	Either way	13	13	N/A	13	
1450	OPA Contract Adjustment Balancing	N/A	N/A	TD_{1400}	Monthly	Due *IESO*	0	N/A	N/A	N/A	Implementation details subject to government

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount										regulation
1451	Incremental Loss Offset Settlement Amount	N/A	9.4.2.4	Calculated as per ancillary service contracts.	Hourly	Due *IESO*	13	N/A	N/A	N/A	Reactive Support and Voltage Control Service
1460	Renewable Energy Standard Offer Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1410}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1410}$ is the total *settlement amount* of *charge type* 1410 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1461	Clean Energy Standard Offer Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1411}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1411}$ is the total *settlement amount* of *charge type* 1411 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1462	Feed-In Tariff Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1412}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1412}$ is the total *settlement amount* of *charge*	Monthly	Due *IESO*	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				type 1412 for the month for *market participant* 'k'.							
1463	Renewable Generation Connection – Monthly Compensation Settlement Debit	N/A	N/A	$\Sigma_K TD_{k,1413}$ x $(\Sigma_H^{M,T} AQEW_{k,h}^{m,t} + EGEI_k) /$ $(\Sigma_{K,H}^{M,T} AQEW_{k,h}^{m,t} + \Sigma_K EGEI_k)$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'K' is the set of all *market participants* 'k'. Where 'M' is the set of all *delivery points* 'm' of *market participant* 'k'. Where $TD_{k,1413}$ is the total *settlement amount* of *charge type* 1413 for the month for *market participant* 'k'.	Monthly	Due MPs	13	N/A	N/A	N/A	Cost recovery implementation details set out in Ontario Regulation 330/09
1464	Hydroelectric Contract Initiative Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1414}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1414}$ is the total *settlement amount* of *charge type* 1414 for the month for *market*	Monthly	Due IESO	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participant 'k'.							
1465	Ontario Clean Energy Benefit (-10%) Program Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,9992}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,9992}$ is the *settlement amount* of *charge type* 9992 for the month for *market participant* 'k'.	Monthly	Due Ministry of Energy	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 495/10.
1466	Conservation and Demand Management – Compensation Balancing Amount	N/A		$\Sigma_K TD_{k,1416}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1416}$ is the *settlement amount* of *charge type* 1416 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1467	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount	**N/A**	**N/A**	$\Sigma_K TD_{k,9982}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,9982}$ is the *settlement amount* of *charge type* 9982 for the month for *market participant*	Monthly	Due Ministry of Energy	**0**	**N/A**	**N/A**	**N/A**	Implementation details subject to Ontario Regulation 363/16

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'k'.							
1468	Biomass Non-Utility Generation Contracts Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1418}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1418}$ is the total *settlement amount* of *charge type* 1418 for the month for *market participant* 'k'.	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1469	Energy from Waste (EFW) Contracts Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1419}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1419}$ is the total *settlement amount* of *charge type* 1419 for the month for *market participant* 'k'	Monthly	Due *IESO*	0	N/A	N/A	N/A	
1470	Ontario Electricity Support Program Balancing Amount	N/A	N/A	$\Sigma_H{}^{M,T}(AQEW_{k,h}{}^{m,t} + EGEI_k) \times TP$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due IESO	13	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 314/15. TP rate subject to OEB regulation.
1471	Capacity Agreement Balancing	N/A	N/A	$\Sigma_K TD_{k,1421}$ Where 'K' is the set of all *market*	Monthly	Either way	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
	Amount			*participants* 'k'. Where $TD_{k,1421}$ is the total *settlement amount* of *charge type* 1421 for the month for *market participant* 'k'							
1472	Capacity Agreement Penalty Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1422}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1422}$ is the total *settlement amount* of *charge type* 1422 for the month for *market participant* 'k'	Monthly	Either way	0	N/A	N/A	N/A	
1473	Energy Sales Agreement Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1423}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1423}$ is the total *settlement amount* of *charge type* 1423 for the month for *market participant* 'k'	Monthly	Either way	0	N/A	N/A	N/A	
1474	Energy Sales Agreement Penalty Balancing Amount	N/A	N/A	$\Sigma_K TD_{k,1424}$ Where 'K' is the set of all *market participants* 'k'. Where $TD_{k,1424}$ is the total *settlement amount* of *charge type* 1424 for the month for *market*	Monthly	Either way	0	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				participant 'k'							
1500	Day-Ahead Production Cost Guarantee Payment – Component 1 and Component 1 Clawback	DA_PCG_ COMP1	9.4.7D.4	$\sum^{T}$ (Component 1 – Component1 Clawback) **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DA_DQSI_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), DA_BE) + $DA_SNLC_{k,h}^{m}$/12 **Component 1 Clawback:** -1 x OP($EMP_h^{m,t}$, MIN($MLP_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), DA_BE) + $DA_SNLC_{k,h}^{m}$/12 Where: T is the set of metering intervals in the settlement hour h. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2.	Hourly	Either Way	13	N/A	N/A	N/A	**Component 1** applies to Variants 1, 2 and 3. **Component 1 Clawback** applies to Variant 2 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For a combustion turbine resource associated to a pseudo unit: **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DA_DQSI_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * (1 – $PST_{k,h}^{p,t}$) **Component 1 Clawback:** -1 x OP($EMP_h^{m,t}$, MIN($MLP_CONS_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * (1 – $PST_{k,h}^{p,t}$) For a steam turbine resource associated to a pseudo unit: **Component 1:** -1 x OP($EMP_h^{m,t}$, MIN($DIGQ_{k,h}^{m,t}$, $DQSI_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t}$), $DIPC_{k,h}^{m,t}$) + ($DA_SNLC_{k,h}^{m}$/12) * $PST_{k,h}^{p,t}$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Component 1 Clawback: -1 x $OP(EMP_h^{m,t}$, $MIN(MLP_CONS_{k,h}^{m,t}$, $AQEI_{k,h}^{m,t})$, $DIPC_{k,h}^{m,t})$ + $(DA_SNLC_{k,h}^{m}/12)$ * $PST_{k,h}^{p,t}$							
1501	Day-Ahead Production Cost Guarantee Payment – Component 2	DA_PCG_COMP2	9.4.7D.4	$\sum^{T} (XDA_BE_{k,h}^{m,t} - MAX(0, XBE_{k,h}^{m,t}))$ Where: T is the set of metering intervals in the settlement hour h. $XDA_BE_{k,h}^{m,t} = (-1) * [OP(EMP_h^{m,t}, min(DA_DQSI_{k,h}^{m,t}, OPCAP_{k,h}^{m,t}), DA_BE) - OP(EMP_h^{m,t}, min(DA_DQSI_{k,h}^{m,t}, OPCAP_{k,h}^{m,t}, max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t})), DA_BE)]$ $XBE_{k,h}^{m,t} = (-1) * [OP(EMP_h^{m,t}, min(DA_DQSI_{k,h}^{m,t}, OPCAP_{k,h}^{m,t}), BE) - OP(EMP_h^{m,t}, min(DA_DQSI_{k,h}^{m,t}, OPCAP_{k,h}^{m,t}, max(DQSI_{k,h}^{m,t}, AQEI_{k,h}^{m,t})), BE)]$ Where:	Hourly	Either Way	13	N/A	N/A	N/A	**Component 2** applies to Variants 1, 2 and 3. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. $EMP_h^{m,t} = 0$. For a combustion turbine and a steam turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$;. For a steam turbine resource associated to a pseudo unit: $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$							
1502	Day-Ahead Production Cost Guarantee Payment – Component 3 and Component 3 Clawback	DA_PCG_ COMP3	9.4.7D.4	$\sum^{T}$ (-1)*(Component 3 + Component 3 Clawback) Where: T is the set of metering intervals in the settlement hour h.	Hourly	Either Way	13	N/A	N/A	N/A	**Component 3** applies to Variants 1, 2 and 3. **Component 3 Clawback** applies to Variant

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For Component 3, the six scenarios of the possible orderings of the generator's DA_DQSI, DQSI and MQSI are as follows: 1. DQSI >= MQSI >= DA_DQSI 2. MQSI >= DQSI >= DA_DQSI 3. DQSI > DA_DQSI > MQSI 4. MQSI > DA_DQSI > DQSI 5. DA_DQSI >= DQSI > MQSI 6. DA_DQSI >= MQSI > DQSI **Component 3:** Component 3 is calculated when: the CMSC for energy ($TD_{k,h,105}^{m,t}$) for the same metering interval is a value other than zero; and the mathematical sign of (DQSI-MQSI) is equal to the mathematical sign of (AQEI-MQSI).							2 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Scenario 1 and 2: 0 Scenario 3: $OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DA_DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Scenario 4: $OP(EMP_h^{m,t}, DA_DQSI_{k,h}^{m,t}, BE) - MAX(OP(EMP_h^{m,t}, DQSI_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE))$ Scenario 5 and 6: $TD_{k,h,105}^{m,t}$ Refer to Market Rules for a description of Scenarios 1 through 6.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				Component 3 Clawback: Component 3 Clawback is calculated when: the event is a constrained-on event (i.e. Scenarios 3 and 5); the *minimum loading point* is greater than the real-time unconstrained schedule; and Component 3 ($PCG_COMP3_{k,h}^{m,t}$) for the same interval is a value other than zero. $MAX(OP(EMP_h^{m,t}, MLP_{k,h}^{m,t}, BE), OP(EMP_h^{m,t}, AQEI_{k,h}^{m,t}, BE)) – OP(EMP_h^{m,t}, MQSI_{k,h}^{m,t}, BE)$ For combustion turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$; and MLP is replaced with MLP_CONS.							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For steam turbine resources associated to a pseudo unit: DA_BE is replaced with $DIPC_{k,h}^{m,t}$, MLP is replaced with MLP_CONS, and $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$. Where 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2.							
1503	Day-Ahead Production Cost Guarantee Payment – Component 4	DA_PCG_COMP4	9.4.7D.4	$\sum^{T}$ ((-1) x [OP($PROR_{r1,h}^{m,t}$, $30R_SQROR_{r1,k,h}^{m,t}$, $BR_{r1,k,h}^{m,t}$) + OP($PROR_{r2,h}^{m,t}$, $10NS_SQROR_{r2,k,h}^{m,t}$, $BR_{r2,k,h}^{m,t}$) + OP($PROR_{r3,h}^{m,t}$, $10S_SQROR_{r3,K,h}^{m,t}$, $BR_{r3,k,h}^{m,t}$)]) Where	Hourly	Either Way	13	N/A	N/A	N/A	**Component 4** applies to Variants 1, 2 and 3. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				T is the set of metering intervals in the settlement hour h. 'OP' is the operating profit function defined in *IESO market rules* Section 9.3.8B.2. r1 = 30-minute operating reserve r2 = 10-minute non-spinning operating reserve r3 = 10-minute spinning operating reserve $30R_SQROR_{r1,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t}, SQROR_{r1,k,h}^{m,t})]$ $10NS_SQROR_{r2,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t} - 30R_SQROR_{r1,k,h}^{m,t}, SQROR_{r2,k,h}^{m,t})]$ $10S_SQROR_{r3,k,h}^{m,t} = MAX[0,MIN(DA_DQSI_{k,h}^{m,t} - MQSI_{k,h}^{m,t} - 30R_SQROR_{r1,k,h}^{m,t} - 10NS_SQROR_{r2,k,h}^{m,t}, SQROR_{r3,k,h}^{m,t})]$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For combustion turbine resources and steam turbine resources associated to a pseudo unit: $DA_DQSI_{k,h}^{m,t}$ is replaced with the $DIGQ_{k,h}^{m,t}$							
1504	Day-Ahead Production Cost Guarantee Payment – Component 5	DA_PCG_COMP5	9.4.7D.4	If first hour of the DACP start event is not HE24, then the start-up cost is calculated as follows: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{m}$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{m} - (DA_SUC_{k,h}^{m} \times 1/12 \times SUC_INT)$ Where SUC_INT is the number of 5-minute intervals between and including Interval 7 and 18 the *market participant* takes to achieve	Hourly	Due *IESO*	13	N/A	N/A	N/A	**Component 5** applies to Variant 1 only. For a description of Production Cost Guarantee Variants, see Market Rules 9.4.7D.2.1

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				MLP Scenario 3 (achieves MLP after the start of the 18th interval): 0 For a combustion turbine resource associated to a pseudo unit: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{p} * (1 - PST_{k,h}^{p,t})$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{p} * MLP_MF * (1 - PST_{k,h}^{p,t})$ Scenario 3 (achieves MLP after the start of the 18th interval): 0 Where $MLP_MF = 1/12 * (12 - SUC_INT)$							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				For a steam turbine resource associated to a pseudo unit: Scenario 1 (achieves MLP before the 7th interval): $DA_SUC_{k,h}^{p} * (PST_{k,h}^{p,t})$ Scenario 2 (achieves MLP between the 7th and 18th interval): $DA_SUC_{k,h}^{p} * MLP_MF * (PST_{k,h}^{p,t})$ Scenario 3 (achieves MLP after the start of the 18th interval): 0. If first hour of the DACP start event is HE24 and the resource has not achieved MLP before Interval 12, then the start-up cost is calculated as follows:							

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				$DA_SUC_{k,h}^{m} * 50\%$ For a combustion turbine resource associated to a pseudo unit: $DA_SUC_{k,h}^{m} * (1 - PST_{k,h}^{p,t}) * 50\%$ For a steam turbine resource associated to a pseudo unit: $DA_SUC_{k,h}^{m} * (PST_{k,h}^{p,t}) * 50\%$							
1505	Day-Ahead Production Cost Guarantee Reversal		9.4.7D.6	For each DACP start event If $\sum_{H,C} TD_{k,h,c} < 0$ Then $\sum_{H,C} TD_{k,h,c}$ Else 0 Where:	Hourly	Due MP	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				'C' is the set of the following charge types 'c' as follows: **1500, 1501, 1502, 1503, 1504** 'H' is the set of all *settlement hours* 'h' in the DACP start event.							
1510	Day-Ahead Generator Withdrawal Charge	DA_GWC	9.3.8F.2	The Day-Ahead Generator Withdrawal Charge is calculated as follows: If notification of the withdrawal is received 4 or more hours prior to first withdrawal hour: $MIN(0,\sum_{i=1}^{n}(-1) * OP([MIN(PD_EMP_h^{m,t}, EMP_h^{m,t}), MLP_{k,h}^{m,t}, DA_BE_{k,h}^{m,t}))$ Where: n is the set of all *metering intervals* 't' in *settlement hour* 'h' for the total number of hours with a committed day-ahead schedule for the DACP start event that are withdrawn If notification of the withdrawal is	Daily	Due *IESO*	13	N/A	N/A	N/A	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				received less than 4 hours prior to first withdrawal hour: $MIN(0,\sum_{i=1}^{n}(-1) * OP(EMP_h^{m,t}, MLP_{k,h}^{m,t}, DA_BE_{k,h}^{m,t})$ Where: n is the set of all *metering intervals* 't' in *settlement hour* 'h' for the total number of hours with a committed day-ahead schedule for the DACP start event that are withdrawn For resources associated to a pseudo unit, the DA_BE is replaced with $DIPC_{k,h}^{m,t}$; and the MLP is replaced with MLP_CONS.							
1550	Day-Ahead Production Cost Guarantee Recovery Debit		9.4.8.1.12	$\sum_{H,c}^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where: 'C' is the set of the following charge types 'c' as follows: **1500, 1501, 1502, 1503, 1504,**	Daily	Due *IESO*	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				1505 'K' is the set of all market participants 'k'. 'M' is the set of all delivery points 'm' and intertie metering points 'i'. 'H' is the set of all *settlement hours* 'h' in the day. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.							
1560	Day-Ahead Generator Withdrawal Rebate		9.4.8.2.14	$\sum_{H,c}{}^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}{}^{m,t} + SQEW_{k,h}{}^{i,t}) / \sum_{K}{}^{M,T} (AQEW_{k,h}{}^{m,t} + SQEW_{k,h}{}^{i,t})]$ Where: 'c' is *charge type* 1510. 'K' is the set of all market participants 'k'. 'M' is the set of all delivery points 'm' and intertie metering points 'i'. 'H' is the set of all *settlement hours* 'h' in the day. 'T' is the set of 12 *metering intervals* 't' during *settlement hour* 'h'.	Daily	Due MP	13	N/A	0	13	

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
1600	Forecasting Service Settlement Amount	N/A	9.1.1.2.16, 9.4.7G , 9.4.7G.1, 9.4.8.1.16, 9.6.3.17, 9.6.11.5	Manual entry based on the values submitted by the forecasting entity.	Monthly	Due MP	13	N/A	N/A	N/A	
1650	Forecasting Service Balancing Amount	N/A	9.1.1.2.16, 9.4.7G , 9.4.7G.1, 9.4.8.1.16, 9.6.3.17, 9.6.11.5	$= \sum_{H,C}^{M,T} TD_{h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{k,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'C' is charge type 'c' **1600.** Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'.	Monthly	Due *IESO*	13	N/A	0	13	
9920	Adjustment Account Credit	AAC	9.6.18.6	$AAD \times \sum_{H}^{M,T} [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t}) / \sum_{K,H}^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$ Where 'H' is the set of all s*ettlement hours* 'h' in the *billing periods* immediately preceding the current *billing period*, as determined by *IESO Board.* Where 'T' is the set of all *metering intervals* 't' in the set of all *settlement hours* 'H'. Where 'M' is the set of all *delivery points* 'm' and *intertie metering points* 'i' Where 'K' is the set of all *market participants* 'k'	Monthly (when applicable)	Due MP	13	N/A	0	13	The *billing period* is defined in Market Manual 5: Settlements Part 5.5: Physical Markets Settlement Statements, section 1.6.30

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
9980	Smart Metering Charge	N/A	N/A	Manual entry based on the values submitted by the *Smart Metering Entity*.	Monthly	Due *IESO*	13	N/A	N/A	N/A	Subject to Ontario Regulation 453/06 and the applicable OEB rate order.
9982	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount	**N/A**	**N/A**	Manual entry based on: (1) the values submitted via on-line settlement forms "Ontario Rebate for Electricity Consumers (OREC) – LDC" and "Ontario Rebate for Electricity Consumers (OREC) – Unit Sub-Meter Provider"; and (2) 8 per cent of the base invoice amount for *market participant consumers* who have an eligible account with the *IESO*	Monthly	Due LDCs, Unit Sub-Meter Providers and eligible MPs	**0**	**N/A**	**N/A**	**N/A**	Implementation details subject to Ontario Regulation 363/16
9990	IESO Administration Charge	N/A	9.4.5.1	$\sum_H{}^{M,T}(AQEW_{k,h}{}^{m,t} + SQEW_{k,h}{}^{i,t} + EGEI_k) \times TP$ Where 'H' is the set of all *settlement hours* 'h' in the month. Where 'T' is the set of all *metering*	Monthly	Due *IESO*	13	N/A	0	13	TP rate subject to OEB regulation.

Charge Type Number	Charge Type Name	Settlement Amount Acronym	Market Rules Reference	Equation	Settlement Resolution	Cashflow (See Note at Beginning of this Section)	HST Tax Treatment within Ontario (%)	HST Tax Treatment for U.S., Manitoba, and Quebec Generation (%)	HST Tax Treatment for U.S. Load (%)	HST Tax Treatment for Manitoba and Quebec Load (%)	Comments
				intervals 't' in the set of all *settlement hours* 'H'.							
9992	Ontario Clean Energy Benefit (-10%) Program Settlement Amount	N/A	N/A	Manual entry based on the values submitted by *market participants* via on-line settlement forms "Ontario Clean Energy Benefit (-10%) – LDC" and "Ontario Clean Energy Benefit (-10%) – Unit Sub-Meter Provider".	Monthly	Due LDCs and Unit Sub-Meter Providers Either way	0	N/A	N/A	N/A	Implementation details subject to Ontario Regulation 495/10.
9996	Recovery of Costs	N/A	Ch. 2, Appendix 3.4	Manual entry as per Chapter 2, Appendix 3.4	Monthly	Due *IESO*	13*	N/A	N/A	N/A	*Refer to the HST Guide (IMO_GDE_0002) for the application of tax rates to other jurisdictions

2.3 Rounding Conventions – by Settlement Variable

2.3.1 Key to the Table of Rounding Conventions for Individual Settlement Variables

Column Name	Description
Variable referenced in Section 2.1	This column provides the name of the variable listed in Section 2.1.
Data Description	The short name of the variable in question.
Number of decimal places (values published by upstream systems)	If this variable is available to *market participants* via another system besides *settlements*, this number of significant digits to the right of the decimal place in the published value. **NOTE:** "published" does not necessarily mean a public report or a report available to all *market participants*. E.g. *metering data* from the *metering database*.
Number of significant digits to the right of the decimal (values received by CRS)	This column discloses the accuracy of a settlement variable received by the *IESO* settlements system via an upstream system OR manually entered as the case may be.
Number of significant digits to the right of the decimal (externally passed from CRS in settlement statements or data files)	This column discloses the accuracy of a settlement variable appearing on a *settlement statement*. **NOTE: This should NOT be confused with the number of decimal places allowable in some columns on the *settlement statements* and data files as set out in, "Format Specification for Settlement Statements and Data Files."**
Comments	Any comments as to the availability of such variables. In some cases, variables are not made available to *market participants* via upstream systems and are noted as such. In other instances variables are not published in a report but are communicated in participant-specific messages (e.g. *bid/offer* confirmation).

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
AAD	Adjustment Account Disbursement	N/A	2	3	• Not published in upstream IESO systems
$AQEI_{k,h}^{m,t}$	Allocated Quantity of Energy Injected	2	3	3	• RMS presentation is in units of KW to TWO decimal places. • Unit change to MW to 3 decimal places occurs prior to transfer to CRS.
$AQEW_{k,h}^{m,t}$	Allocated Quantity of Energy Withdrawn	2	3	3	• RMS presentation is in units of KW to TWO decimal places. • Unit change to MW to 3 decimal places occurs prior to transfer to CRS.
$AQOR_{r,k,h}^{m,t}$	Allocated Quantity of Operating Reserve	1	1	1	• See SQROR.
BE	Energy Offers	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
BL	Energy Bids	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* ("*dispatch data*") are received.
BR_r	Operating Reserve Offers	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* ("*dispatch data*") are received.
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought	N/A	1 or 3	1 or 3	• Not published via upstream *IESO* systems. • *Physical Bilateral Contract Data* is provided to the *IESO* by the *selling market participant*. • Accuracy driven by the submission at the MIM interface and the method used (i.e. absolute quantities vs. 100% of *PBC*).

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold	N/A	1 or 3	1 or 3	• Not published via upstream *IESO* systems. • *Physical Bilateral Contract Data* is provided to the *IESO* by the *selling market participant*. • Accuracy driven by the submission at the MIM interface and the method used (i.e. absolute quantities vs. 100% of *PBC*).
CGC	Combined Guaranteed Costs	N/A	2	2	• Not published via upstream *IESO* systems.
$DA_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *schedule of record*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$DA_BE_{k,h}^{m,t}$	*Energy Offer* submitted into the *schedule of record at a delivery point*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DA_BL_{k,h}^{i,t}$	*Energy* Bids submitted into the *schedule of record*	N/A	N/A	N/A	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$DA_DQSI_{k,h}^{i,t}$	*Schedule of record* dispatch quantity scheduled for injection at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_DQSI_{k,h}^{m,t}$	*Schedule of record* dispatch quantity scheduled for injection at a *delivery point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_DQSW_{k,h}^{i,t}$	*Schedule of record* dispatch quantity scheduled for withdrawal at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_ELMP_{h}^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	2	2	2	• MIM Publication.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DA_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	2	2	2	• MIM Publication.
$DA_SNLC_{k,h}^{m}$	Speed-no-load costs submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SNLC_{k,h}^{p}$	Speed-no-load costs for pseudo units submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SUC_{k,h}^{m}$	Start-up costs submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DA_SUC_{k,h}^{p}$	Start-up costs for pseudo units submitted into the *schedule of record*	1	2	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DIPC_{k,h}^{m,t}$	Derived Interval Price Curve	1	2	1	• Derived price curve and therefore not published on *settlement statements*.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DIGQ_{k,h}^{m,t}$	Derived Interval Guaranteed Quantity	1	1	1	• Derived schedule quantity and therefore not published on *settlement statements*.
$DQSI_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Injection	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DQSR_{r,k,h}^{m,t}$	Dispatch Quantity Schedule of Operating Reserve	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$DQSW_{k,h}^{m,t}$	Dispatch Quantity of Energy Scheduled for Withdrawal	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
DRACP	Demand Response Auction Clearing Price	2	2	2	• Published in post-auction report.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$DRACP_h$	Hourly Demand Response Auction Clearing Price	N/A	2	2	• Not published via upstream *IESO* systems.
$DRBOC_k$	Demand Response Buy-Out Capacity	N/A	3	3	• Not published via upstream *IESO* systems.
$DRCO_k$	Demand Response Capacity Obligation (MW)	1	3	3	• Published in private post-auction report.
$DREBQ_k$	Demand Response Energy Bid Quantity	N/A	1	1	• Not published via upstream *IESO* systems.
DRNPF	Demand Response Non-Performance Factor	N/A	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
DRSQty	Demand Response Scheduled Quantity	N/A	1	1	• Not published via upstream *IESO* systems.
EEQ	Excluded Energy Quantity	N/A	3	3	• Not published via upstream *IESO* systems.
$EGEI_k$	Embedded Generator Energy Injection	N/A	3	3	• Not published via upstream *IESO* systems.
$EIM_{k,h}$	Operating Profit Function for the IMPORT of Energy under the Intertie Offer/Bid Guarantee Settlement Credit	N/A See Section 2.4	N/A See Section 2.4	N/A See Section 2.4	• This acronym is associated with the energy import component of the Intertie Offer/Bid Guarantee Settlement Credit.
$EMP_h^{i,t}$	5-minute Energy Market Price at the Interties	2	2	2	• MIM Publication.
$EMP_h^{m,t}$	5-minute Energy Market Price within Ontario	2	2	2	• MIM Publication.
$EMP_h^{REF,t}$	5-minute Energy Market Reference Price	2	2	2	• MIM Publication.
ETS	Export Transmission Service Tariff Rate	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
FP_h^m	Fixed Energy Rate	N/A	2	2	• Not published via upstream *IESO* systems.
FPC_h^m	Rate for a designated group of *charge types* (see description of *charge type* 141))	N/A	2	2	• Not published via upstream *IESO* systems.
GRP	Generator Regulated Price	N/A	2	2	• Not published via upstream *IESO* systems.
$HOEP_h$	Hourly Ontario Energy Price	2	2	2	• MIM Publication.
$LCD_{k,h}^m$	Line Connection Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
MC_h^m	Minimum Consumption	1	1	1	
MI	Ordered matrix of and corresponding IOG *settlement amounts*	1 and 2	2	2	• Derived set of variables and therefore not published on *settlement statements*.
$MLP_{k,h}^{m,t}$	Minimum Loading Point	1	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$MLP_CONS_{k,h}^{m,t}$	Minimum Loading Point for a steam turbine resource or a combustion turbine resource associated to a pseudo unit	1	1	1	• Not published via upstream *IESO* systems.
$MQSI_{k,h}^{m,t}$	Market Quantity Scheduled for Injection	1	1	1	
$MQSI\{adj\}_{k,h}^{m,t}$	Adjusted Market Quantity Scheduled for Injection	1	1	1	• Derived variable and therefore not published on *settlement statements.*
$MQSW_{k,h}^{m,t}$	Market Quantity Scheduled for Withdrawal	1	1	1	
$NSD_{k,h}^{m}$	Network Service Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
OP	Operating Profit Function	N/A See Section 2.4	N/A See Section 2.4	N/A See Section 2.4	• This acronym is associated with the operating profit equation used within the CMSC equation.
$OPCAP_{k,h}^{m,t}$	Operating Capacity	1	1	1	• Not published via upstream *IESO* systems.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$PB_IM_h^t$	Price bias adjustment factor for import transactions	2	2	2	• Published on by the *IESO* on a periodic basis.
$PB_EX_h^t$	Price bias adjustment factor for export transactions	2	2	2	• Published on by the *IESO* on a periodic basis.
$PD_BE_{k,h}^{i,t}$	*Energy Offer* submitted into the *Pre-dispatch*	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$PD_BL_{k,h}^{i,t}$	*Energy bids* submitted into the *Pre-dispatch*	N/A	1	1	• Not published via upstream *IESO* systems. • Confirmations passed to *market participants* as *bids*/*offers* (“*dispatch data*”) are received.
$PD_DQSI_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for injection at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.
$PD_DQSW_{k,h}^{i,t}$	*Pre-dispatch* quantity scheduled for withdrawal at an *intertie metering point*	1	1	1	• Not published via upstream *IESO* systems. • Passed to *market participants* via dispatch messaging.

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$PD_ELMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the export zone	2	2	2	• MIM Publication.
$PD_EMP_h^{m,t}$	Pre-dispatch energy market price for Ontario	2	2	2	• MIM Publication.
$PD_ILMP_h^{m,t}$	*Pre-dispatch* constrained schedule price for an *intertie metering point* in the import zone	2	2	2	• MIM Publication.
$PROR_{r,h}^{m,t}$	5-minute Operating Reserve Price	2	2	5	• MIM Publication.
$PST_{k,h}^{p,t}$	Steam Turbine Portion from Daily Generator Data	1	1	1	• Not published via upstream *IESO* systems.
PTS-L	Provincial Transmission Service Line Connection Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".
PTS-N	Provincial Transmission Service Network Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
PTS-T	Provincial Transmission Service Transformation Connection Service Rate ($/KW)	N/A	2	2	• Not published via upstream *IESO* systems. • Subject to the OEB "Ontario Transmission Rate Order".
$QTR_{k,h}^{i,j}$	Quantity of Transmission Rights Owned	PENDING	0	0	• TR's are in denominations to the nearest MW. • Upstream publication accuracy currently being resolved.
$SQEI_{k,h}^{i,t}$	Scheduled Quantity of Energy Injected at an *intertie metering point*	1	1	1	
$SQEW_{k,h}^{i,t}$	Scheduled Quantity of Energy Withdrawn at an *intertie metering point*	1	1	1	
$SQROR_{r,k,h}^{m,t}$	Scheduled Quantity of class r *Operating Reserve*	1	1	1	

Variable referenced in Section 2.1	Data Description	Number of DECIMAL PLACES (values published by upstream systems)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (values received by CRS)	MAXIMUM Number of SIGNIFICANT DIGITS to the right of the decimal (externally passed from CRS in settlement statements or data files)	Comments
$TCD_{k,h}^{m}$	Transformation Connection Demand (KW)	2 and 3	3	3	• RMS presentation is in units of KW to 2 decimal places. • Unit changes to MW to 3 decimal places prior to transfer to the Transmission Tariff Demand Calculator (TTDC). • Unit changes to KW to 3 decimal places prior to transfer to CRS.
$TD_{k,h,c}$	Total Market Settlement Amount	N/A	N/A	N/A	• N/A- notational description of an aggregated financial amount (reported to the nearest cent when applicable).
TP_c	Tariff price	N/A	N/A	N/A	• N/A – notational description of tariff rate (reported to the nearest cent when applicable).
TRMP	TR Market Clearing Price	2	2	2	
TRCAD	TR Clearing Account Disbursements	N/A	2	2	• Not published via upstream *IESO* systems.

2.4 Rounding Conventions – by Charge Type

2.4.1 General Notes

- **The table below references significant digits to the right of the decimal place. This should NOT be confused with the number of decimal places allowable in some columns on the *settlement statements* and data files as set out in, "Format Specification for Settlement Statements and Data Files."**

- All **settlement amounts** reported by the *IESO* settlements system are rounded to the nearest cent (i.e. to two decimal places) on *settlement statements,* although some settlement calculations may only yield 1 significant digit to the right of the decimal place. In these instances, the financial amount is NOT further rounded to the nearest ten cents. **The table below does not include the final rounding step to the nearest cent, as this is done for ALL *settlement amounts*. Rather, it describes any intermediate calculations (particularly, those involving division) that involve rounding prior to the final calculation of the *settlement amount*.**

2.4.2 Key to the Table of Rounding Conventions

Column Name	Description
Charge Type Number	This table contains an entry for each *charge type* listed in Section 2.2 of this document ("IESO Charge Types and Equations").
Charge Type Name	The name of each of the *charge types*.
INPUT VARIABLES **Least number of significant digits to the right of the decimal**	In terms of assessing the accuracy of the final *settlement amount*, this column is derived from the settlement variable received by the *settlement* system with the LEAST number of significant digits to the right of the decimal place.
INPUT VARIABLES **Maximum number of significant digits to the right of the decimal**	In terms of assessing the accuracy of the final *settlement amount*, this column is derived from the settlement variable received by the *settlement* system with the MAXIMUM number of significant digits to the right of the decimal place.

Column Name	Description
INTERMEDIATE Rounding done by Settlements	This column indicates whether or not any **INTERMEDIATE** rounding is done by the *IESO settlement process*. **This does NOT include the final rounding of *settlement amounts* to 2 decimal places as the last step in the calculation of ALL *charge types*.**
INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	This column ONLY describes an intermediate calculation of the *settlement amount* in which rounding occurs PRIOR to the final rounding of the *settlement amount* to the nearest cent.
Disposition of INTERMEDIATE CALCULATION 1	This column describes the disposition of the rounded value resulting from Intermediate Calculation 1.
INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	This column ONLY describes an intermediate calculation of the *settlement amount* in which rounding occurs PRIOR to the final rounding of the *settlement amount* to the nearest cent.
Disposition of INTERMEDIATE CALCULATION 2	This column describes the disposition of the rounded value resulting from Intermediate Calculation 2.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
52	Transmission Rights Auction Settlement Debit	0	2	No				
100	Net Energy Market Settlement for Generators and Dispatchable Load	1	3	Yes	Numerator: BCQ Denominator: 12 Resulting Decimals: 3	BCQ quantities Multiplied by EMP when applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
101	Net Energy Market Settlement for Non-dispatchable Load	1	3	Yes	Numerator: BCQ Denominator: 12 Resulting Decimals: 3	BCQ quantities Multiplied by EMP when applicable.		
102	TR Clearing Account Credit	1	3	No				
103	Transmission Charge Reduction Fund	2	3	Yes	Numerator: Difference between SQEW – SQEI by *intertie zone* Denominator: 12 Resulting Decimals: 3	Resulting value included with the TCRF calculation at that particular zone for the *metering interval* in question.		
104	Transmission Rights Settlement Credit	0	2	Yes	Numerator: Summation of the zonal price difference $(EMP_h^{j,t} – EMP_h^{i,t})$ Denominator: 12 Resulting Decimals: 5	Multiplied by QTR for the *settlement hour*.		
105	Congestion Management Settlement Credit for Energy	1	3	Yes	AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSI, BE) OP(EMP, DQSI, BE) OP(EMP, AQEI, BE) OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
106	Congestion Management Settlement Credit for 10 Minute Spinning Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
107	Congestion Management Settlement Credit for 10 Minute Non-spinning Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
108	Congestion Management Settlement Credit for 30 Minute Operating Reserve	1	2	Yes	Numerators OP(PROR, MQSR, BR) OP(PROR, DQSR, BR) OP(PROR, AQOR, BR) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
111	Northern Pulp and Paper Mill Electricity Transition Program Settlement Amount	1	3	No				
112	Ontario Power Generation Rebate	2	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
113	Additional Compensation for Administrative Pricing Credit	1	3	Yes	For the calculation outlined in 7.8.4A.16 only: for dispatchable *facilities* located within Ontario only AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	(For the calculation outlined in 7.8.4A.16 only) For dispatchable *facilities* located within Ontario only: Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	For the calculation outlined in 7.8.4A.16 only: Numerators: for dispatchable *facilities* located within Ontario: OP(EMP, AQEI, BE) OP(EMP, AQEW, BL) for Imports or Exports: OP(EMP, DQSI, BE) OP(EMP, DQSW, BL) Denominator: 12 Resulting Decimals: 2	(For the calculation outlined in 7.8.4A.16 only) The results are used in the final calculation
114	Outage Cancellation/ Deferral Settlement Credit	2	2	No				
115	Unrecoverable Testing Costs Credit	2	2	No				
116	Tieline Maintenance Reliability Credit	2	2	No				
118	Emergency Energy Rebate	1	3	No				
119	Station Service Reimbursement Credit	2	2	No				
120	Local Market Power Debit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
121	Northern Industrial Electricity Rate Program Settlement Amount	1	3	No				
122	Ramp Down Settlement Amount	1	3	Yes	AQEI multiplied by 12 or AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEI, BE) or OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSI, BE) OP(EMP, DQSI, BE) OP(EMP, AQEI, BE) OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.
130	Intertie Offer Settlement Credit – Energy	1	3	Yes	Numerators OP(EMP, MQSI, BE) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.		
133	Generator Cost Guarantee Payment	1	3	No				
134	Demand Response Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
135	Real-time Import Failure Charge	1	3	Yes	**TERM 1 – Failure Charge** Numerator: EMP + PB_IM – PD_EMP Denominator: 12 Resulting Decimals: 2 **TERM 2 – Price Cap** Numerator: MAX(0,EMP) * RT_ISD Denominator: 12 Resulting Decimals: 2	TERM 1 and TERM 2 compared as applicable.		
136	Real-time Export Failure Charge	1	3	Yes	**TERM 1 – Failure Charge** Numerator: PD_EMP – EMP – PB_EX Denominator: 12 Resulting Decimals: 2 **TERM 2 – Price Cap** Numerator: MAX(0,PD_EMP) * RT_ESD Denominator: 12 Resulting Decimals: 2	TERM 1 and TERM 2 compared as applicable.		
140	Fixed Energy Rate Settlement Amount	1	3	No				
141	Fixed Wholesale Charge Rate Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
142	Regulated Price Plan Settlement Amount	1	3	No				
143	NUG Contract Adjustment Settlement Amount	1	3	No				
144	Regulated Nuclear Generation Adjustment Amount	1	3	No				
145	Regulated Hydroelectric Generation Adjustment Amount	1	3	No				
146	Global Adjustment Settlement Amount	1	3	No				
147	Class A – Global Adjustment Settlement Amount	1	3	No				
148	Class B – Global Adjustment Settlement Amount	1	3	No				
149	Regulated Price Plan Retailer Settlement Amount	1	3	No				
150	Net Energy Market Settlement Uplift	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
155	Congestion Management Settlement Uplift	1	3	No				
161`	Northern Pulp and Paper Mill Electricity Transition Program Balancing Amount	1	3	No				
162	Ontario Power Generation Rebate Debit	1	3	No				
163	Additional Compensation for Administrative Pricing Debit	1	3	No				
164	Outage Cancellation/ Deferral Debit	1	3	No				
165	Unrecoverable Testing Costs Debit	1	3	No				
166	Tieline Reliability Maintenance Debit	1	3	No				
167	Emergency Energy and EDRP Debit	1	3	No				
168	TR Market Shortfall Debit	1	3	No				
169	Station Service Reimbursement Debit	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
170	Local Market Power Rebate	1	3	No				
171	Northern Industrial Electricity Rate Program Balancing Amount	1	3	No				
183	Generator Cost Guarantee Recovery Debit	1	3	No				
184	Demand Response Debit	2	2	No				
186	Intertie Failure Charge Rebate	1	3	No				
190	Fixed Energy Rate Balancing Amount	2	2	No				
191	Fixed Wholesale Charge Rate Balancing Amount	2	2	No				
192	Regulated Price Plan Balancing Amount	2	2	No				
193	NUG Contract Adjustment Balancing Amount	2	2	No				
194	Regulated Nuclear Generation Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
195	Regulated Hydroelectric Generation Balancing Amount	2	2	No				
196	Global Adjustment Balancing Amount	2	2	No				
197	Global Adjustment-Special Programs Balancing Amount	2	2	No				
198	Renewable Generation Balancing Amount	2	2	No				
199	Regulated Price Plan Retailer Balancing Amount	2	2	No				
200	10 Minute Spinning Reserve Market Settlement Credit.	1	2	No				
201	10 Minute Spinning Reserve Market Shortfall Rebate	1	3	No				
202	10 Minute Non-spinning Reserve Market Settlement Credit	1	2	No				
203	10 Minute Non-spinning Reserve Market Shortfall Rebate	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
204	30 Minute Operating Reserve Market Settlement Credit	1	2	No				
205	30 Minute Operating Reserve Market Shortfall Rebate	1	3	No				
250	10 Minute Spinning Market Reserve Hourly Uplift	1	3	No				
251	10 Minute Spinning Market Reserve Shortfall Debit	1	3	No				
252	10 Minute Non-spinning Market Reserve Hourly Uplift	1	3	No				
253	10 Minute Non-spinning Market Reserve Shortfall Debit	1	3	No				
254	30 Minute Operating Reserve Market Hourly Uplift	1	3	No				
255	30 Minute Operating Reserve Market Shortfall Debit	1	3	No				
400	Black Start Capability Settlement Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
404	Regulation Service Settlement Credit	2	2	No				
406	Emergency Demand Response Credit	2	2	No				
410	IESO-Controlled Grid Special Operations Credit	2	2	No				
450	Black Start Capability Settlement Debit	1	3	No				
451	Hourly Reactive Support and Voltage Control Settlement Debit	1	3	No				
452	Monthly Reactive Support and Voltage Control Settlement Debit	1	3	No				
454	Regulation Service Settlement Debit	1	3	No				
460	IESO-Controlled Grid Special Operations Debit	2	2	No				
500	Must Run Contract Settlement Credit	2	2	No				
550	Must Run Contract Settlement Debit	1	3	No				
600	Network Service Credit	2	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
601	Line Connection Service Credit	2	3	No				
602	Transformation Connection Service Credit	2	3	No				
603	Export Transmission Service Credit	1	2	No				
650	Network Service Charge	2	3	No				
651	Line Connection Service Charge	2	3	No				
652	Transformation Connection Service Charge	2	3	No				
653	Export Transmission Service Charge	1	2	No				
700	Dispute Resolution Settlement Credit	2	2	No				
702	Debt Retirement Credit	2	2	No				
703	Rural and Remote Settlement Credit	2	2	No				
704	OPA Administration Credit	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
750	Dispute Resolution Settlement Debit	2	2	No				
751	Dispute Resolution Board Service Debit	2	2	No				
752	Debt Retirement Charge	2	3	No				
753	Rural and Remote Settlement Debit	2	3	No				
754	OPA Administration Charge	1	3	No				
850	Market Participant Default Settlement Debit (recovery)	2	2	No				
851	Market Participant Default Interest Debit	2	2	No				
900	GST/HST Credit	2	2	No				
950	GST/HST Debit	2	2	No				
1050	Self-Induced Dispatchable Load CMSC Clawback	1	3	Yes	AQEW multiplied by 12 Resulting Decimals: 3	Used in the calculation of OP(EMP, AQEW, BL) as the case may be.	Numerators OP(EMP, MQSW, BL) OP(EMP, DQSW, BL) OP(EMP, AQEW, BL) OP(EMP, MC, BL) Denominator: 12 Resulting Decimals: 2	Profits compared as applicable.
1051	Ramp-Down CMSC Claw Back	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1130	Day-Ahead Intertie Offer Guarantee Settlement Credit	1	3	Yes	**FOR EACH 5-MINUTE *METERING INTERVAL:*** Numerators OP[EMP, MIN(DQSI, PDR_DQSI), PDR_BE] Denominator: 12 Resulting Decimals: 2	Results for each 5-minute *metering interval* are summed for the hour. Profits compared as applicable.		
1131	Intertie Offer Guarantee Settlement Credit	1	3	Yes	**For each 5 minute metering interval:** **RT-IOG – Real Time IOG** Numerator OP(EMP,MQSI,BE) Denominator: 12 Resulting Decimal: 2 **DA-IOG - Day-Ahead IOG** **Component 1** Numerator OP(EMP, Min(DA_DQSI,DQSI),DA_BE) Denominator: 12	**For DA-IOG**, Component 1, Component 2 and Component 3 are compared as applicable. Results of RT-IOG and DA-IOG are compared in IOG OFFSET component.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
					Resulting Decimal: 2 **Component 2** Numerator XDA_BE – MAX(0,XBE) Denominator: 12 Resulting Decimal: 2 **Component 3** Numerator OP(EMP,MQSI,BE), OP(EMP,DA_DQSI,BE) OP(EMP,DQSI,BE) Denominator: 12 Resulting Decimal: 2			
1133	Day-Ahead Generation Cost Guarantee Payment	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1134	Day-Ahead Linked Wheel Failure Charge	1	3	Yes	**RT_EFC_DALW and RT_IFC_DALW for each 5-minute metering interval are summed for the hour.** **Resulting Decimal: 2**	**Results are compared as applicable.**		
1135	Day-Ahead Import Failure Charge	1	3	Yes	**TERM 1 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSI, DA_BE) OP(PD_EMP, PD_DQSI, DA_BE) Resulting Decimals: 2 **TERM 2 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSI, PD_BE) OP(PD_EMP, PD_DQSI, PD_BE) Resulting Decimals: 2	TERM 1, TERM 2 and TERM 3 compared as applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
					TERM 3 – Price cap Numerator Max(0,PD_EMP) x DA_ISD Denominator: 12 Resulting Decimals: 2			

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1136	Day-Ahead Export Failure Charge	1	3	Yes	**TERM 1 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSW, DA_BL) OP(PD_EMP, PD_DQSW, DA_BL) Resulting Decimals: 2 **TERM 2 – Operating Profit („OP") Function used to calculate Failure Charge** OP(PD_EMP, DA_DQSW, PD_BL) OP(PD_EMP, PD_DQSW, PD_BL) Resulting Decimals: 2	TERM 1, TERM 2 and TERM 3 compared as applicable.		
1137	Intertie Offer Guarantee Reversal	2	2	No				
1138	Day-Ahead Fuel Cost Compensation Credit	2	2	No				
1139	Intertie Failure Charge Reversal	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1188	Day-Ahead Fuel Cost Compensation Debit	1	3	No				
1300	Capacity Based Demand Response Program Availability Payment Settlement Amount	1	3	No				
1301	Capacity Based Demand Response Program Availability Over-Delivery Settlement Amt	1	3	No				
1302	Capacity Based Demand Response Program Availability Set-Off Settlement Amount	1	3	No				
1303	Capacity Based Demand Response Program Utilization Payment Settlement Amount	1	3	No				
1304	Capacity Based Demand Response Program Utilization Set-Off Settlement Amount	1	3	No				
1305	Capacity Based Demand Response Program Planned Non-Performance Event Set-Off Amt	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1306	Capacity Based Demand Response Program Measurement Data Set-Off Settlement Amt	1	3	No				
1307	Capacity Based Demand Response Program Buy-Down Settlement Amount	1	3	No				
1308	Capacity Based Demand Response Program Performance Breach Settlement Amount	1	3	No				
1309	Demand Response Pilot – Availability Payment	1	3	No				
1310	Demand Response Pilot – Availability Clawback	1	3	No				
1311	Demand Response Pilot – Availability Charge	1	3	No				
1312	Demand Response Pilot – Availability Adjustment	1	3	No				
1313	Demand Response Pilot – Demand Response Bid Guarantee	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1314	Demand Response Capacity Obligation – Availability Payment	1	3	No				
1315	Demand Response Capacity Obligation – Availability Charge	1	3	No				
1316	Demand Response Capacity Obligation – Administration Charge	1	3	No				
1317	Demand Response Capacity Obligation – Dispatch Charge	1	3	No				
1318	Demand Response Capacity Obligation – Capacity Charge	1	3	No				
1319	Demand Response Capacity Obligation – Buy-Out Charge	1	3	No				
1330	On behalf of *Former* OPA for the DR2 Program – Availability Payment Settlement Amount	1	3	No				
1331	On behalf of *Former* OPA for the DR2 Program – Availability Set-Off Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1332	On behalf of *Former* OPA for the DR2 Program – Utilization Payment Settlement Amount	1	3	No				
1333	On behalf of *Former* OPA for the DR2 Program – Utilization Set-Off Settlement Amount	1	3	No				
1334	On behalf of *Former* OPA for the DR2 Program – Meter Data Set-Off Settlement Amount	1	3	No				
1335	On behalf of *Former* OPA for the DR2 Program – Buy-Down Settlement Amount	1	3	No				
1336	On behalf of *Former* OPA for the DR2 Program – Miscellaneous Settlement Amount	1	3	No				
1340	On behalf of *Former* OPA for the DR3 Program – Availability Payment Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1341	On behalf of *Former* OPA for the DR3 Program – Availability Over-Delivery Settlement Amt	1	3	No				
1342	On behalf of *Former* OPA for the DR3 Program – Availability Set-Off Settlement Amount	1	3	No				
1343	On behalf of *Former* OPA for the DR3 Program – Utilization Payment Settlement Amount	1	3	No				
1344	On behalf of *Former* OPA for the DR3 Program – Utilization Set-Off Settlement Amount	1	3	No				
1345	On behalf of *Former* OPA for the DR3 Program – Planned Non-Performance Event Set-Off Amt	1	3	No				
1346	On behalf of *Former* OPA for the DR3 Program – Meter Data Set-Off Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1347	On behalf of *Former* OPA for the DR3 Program – Buy-Down Settlement Amount	1	3	No				
1348	On behalf of *Former* OPA for the DR3 Program – Miscellaneous Settlement Amount	1	3	No				
1350	Capacity Based Recovery Amount for Class A Loads	1	3	No				
1351	Capacity Based Recovery Amount for Class B Loads	1	3	No				
1380	Demand Response 2 Availability Payment Balancing Amount	2	2	No				
1381	Demand Response 2 Availability Set-Off Balancing Amount	2	2	No				
1382	Demand Response 2 Utilization Payment Balancing Amount	2	2	No				
1383	Demand Response 2 Utilization Set-Off Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1384	Demand Response 2 Meter Data Set-Off Balancing Amount	2	2	No				
1385	Demand Response 2 Buy-Down Balancing amount	2	2	No				
1386	Demand Response 2 Miscellaneous Balancing amount	2	2	No				
1390	Demand Response 3 Availability Payment Balancing Amount	2	2	No				
1391	Demand Response 3 Availability Over-Delivery Balancing Amount	2	2	No				
1392	Demand Response 3 Availability Set-Off Balancing Amount	2	2	No				
1393	Demand Response 3 Utilization Payment Balancing Amount	2	2	No				
1394	Demand Response 3 Utilization Set-Off Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1395	Demand Response 3 Planned Non-Performance Event Set-Off Balancing Amount	2	2	No				
1396	Demand Response 3 Meter Data Set-Off Balancing Amount	2	2	No				
1397	Demand Response 3 Buy-Down Balancing Amount	2	2	No				
1398	Demand Response 3 Miscellaneous Balancing Amount	2	2	No				
1400	OPA Contract Adjustment Settlement Amount	1	2	No				
1401	Incremental Loss Settlement Credit	1	6	No				
1402	Hourly Condense System Constraints Settlement Credit	1	5	No				
1403	Speed-no-load Settlement Credit	1	2	No				
1404	Condense Unit Start-up and OM&A Settlement Credit	1	2	No				
1405	Hourly Condense Energy Costs Settlement Credit	1	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1406	Monthly Condense Energy Costs Settlement Credit	1	2	No				
1407	Condense Transmission Tariff Reimbursement Settlement Credit	2	3	No				
1408	Condense Availability Cost Settlement Credit	1	2	No				
1409	Monthly Condense System Constraints Settlement Credit	1	2	No				
1410	Renewable Energy Standard Offer Program Settlement Amount	1	3	No				
1411	Clean Energy Standard Offer Program Settlement Amount	1	3	No				
1412	Feed-In Tariff Program Settlement Amount	1	3	No				
1413	Renewable Generation Connection – Monthly Compensation Settlement Credit	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1414	Hydroelectric Contract Initiative Settlement Amount	1	3	No				
1415	Conservation Assessment Recovery	1	3	No				
1416	Conservation and Demand Management - Compensation Settlement Credit	1	3	No				
1417	Daily Condense Energy Costs Settlement Credit	1	2	No				
1418	Biomass Non-Utility Generation Contracts Settlement Amount	1	3	No				
1419	Energy from Waste (EFW) Contracts Settlement Amount	1	3	No				
1420	Ontario Electricity Support Program Settlement Amount	2	2	No				
1421	Capacity Agreement Settlement Credit	0	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1422	Capacity Agreement Penalty Settlement Amount	0	2	No				
1423	Energy Sales Agreement Settlement Credit	0	3	No				
1424	Energy Sales Agreement Penalty Settlement Amount	0	2	No				
1450	OPA Contract Adjustment Balancing Amount	2	2	No				
1451	Incremental Loss Offset Settlement Amount	2	2	No				
1460	Renewable Energy Standard Offer Program Balancing Amount	2	2	No				
1461	Clean Energy Standard Offer Program Balancing Amount	2	2	No				
1462	Feed-In Tariff Program Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1463	Renewable Generation Connection – Monthly Compensation Settlement Debit	1	3	No				
1464	Hydroelectric Contract Initiative Balancing Amount	2	2	No				
1465	Ontario Clean Energy Benefit (-10%) Program Balancing Amount	2	2	No				
1466	Conservation and Demand Management - Compensation Balancing Amount	2	2	No				
1467	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Balancing Amount	2	2	No				
1468	Biomass Non-Utility Generation Contracts Balancing Amount	2	2	No				
1469	Energy from Waste (EFW) Contracts Balancing Amount	2	2	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1470	Ontario Electricity Support Program Balancing Amount	2	3	No				
1471	Capacity Agreement Balancing Amount	2	2	No				
1472	Capacity Agreement Penalty Balancing Amount	2	2	No				
1473	Energy Sales Agreement Balancing Amount	2	2	No				
1474	Energy Sales Agreement Penalty Balancing Amount	2	2	No				
1500	Day-Ahead Production Cost Guarantee Payment – Component 1 and Component 1 Clawback	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, DA_BE),	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, DA_BE), OP(EMP,DQSI, DA_BE), OP(EMP,DA_DQSI, DA_BE) Denominator: 12 Resulting Decimal: 2	Profits are compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
							Numerator DA_SNLC Denominator: 12 Resulting decimal : 2 Results for each 5-minute metering interval are summed for the hour.	
1501	Day-Ahead Production Cost Guarantee Payment – Component 2	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, DA_BE), OP(EMP,AQEI, BE)	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, DA_BE), OP(EMP,DQSI, DA_BE), OP(EMP,DA_DQSI, DA_BE) OP(EMP,OPCAP, DA_BE) OP(EMP,AQEI, BE), OP(EMP,DQSI, BE), OP(EMP,DA_DQSI, BE) OP(EMP,OPCAP, BE) Resulting Decimal: 2	Profits are compared as applicable.

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1502	Day-Ahead Production Cost Guarantee Payment – Component 3 and Component 3 Clawback	1	3	Yes	AQEI is multiplied by 12 Resulting decimal: 3	Use in the calculation of OP(EMP,AQEI, BE),	**For each 5 minute metering interval:** Numerator OP(EMP,AQEI, BE), OP(EMP,DQSI, BE), OP(EMP,DA_DQSI, BE) OP(EMP,MLP, BE) Results for each 5-minute metering interval are summed for the hour. Resulting Decimal: 2	Profits are compared as applicable.
1503	Day-Ahead Production Cost Guarantee Payment – Component 4	1	3	Yes	**For each 5 minute metering interval:** Numerators OP(PROR,30R_SQROR,BR), OP(PROR,10NS_SQROR,BR), OP(PROR,10S_SQROR,BR), Denominator: 12 Resulting Decimal: 2	Profits are compared as applicable.		

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1504	Day-Ahead Production Cost Guarantee Payment – Component 5	1	3	No				
1505	Day-Ahead Production Cost Guarantee Reversal	1	3	No				
1510	Day-Ahead Generator Withdrawal Charge	1	3	Yes	**For each 5 minute metering interval:** Numerators OP(EMP,MLP,DA_BE) or OP(PD_EMP,MLP,DA_BE) Denominator: 12 Resulting Decimal: 2	Results for each 5-minute metering interval are summed for the hour.		
1550	Day-Ahead Production Cost Guarantee Recovery Debit	1	3	No				
1560	Day-Ahead Generator Withdrawal Rebate	1	3	No				
1600	Forecasting Service Settlement Amount	1	3	No				

Charge Type Number	Charge Type Name	INPUT VARIABLES Least number of significant digits to the right of the decimal	INPUT VARIABLES Maximum number of significant digits to the right of the decimal	Intermediate Rounding done by Settlements?	INTERMEDIATE CALCULATION 1 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 1	INTERMEDIATE CALCULATION 2 (where intermediate rounding occurs)	DISPOSITION OF INTERMEDIATE CALCULATION 2
1650	Forecasting Service Balancing Amount	1	3	No				
9920	Adjustment Account Credit	1	1	No				
9980	Smart Metering Charge	2	2	No				
9982	Ontario Rebate for Electricity Consumers (8% Provincial Rebate) Settlement Amount	2	2	No				
9990	IESO Administration Charge	2	3	No				
9992	Ontario Clean Energy Benefit (-10%) Program Settlement Amount	2	2	No				
9996	Recovery of Costs	2	2	No				

2.5 Settlement of Physical Bilateral Contracts

2.5.1 Governing Rules

Settlement of *physical bilateral contracts* is discussed in Section 2.1 of Chapter 8, of the *IESO market rules*. In summary this particular *market rules* Section prescribes the prices to be applied to a *Physical Bilateral Contract Quantity of Energy Sold* ($BCQ_{k,b,h}^{m,t}$) or a *Physical Bilateral Contract Quantity of Energy Bought* ($BCQ_{s,k,h}^{m,t}$) at a *delivery point* or an *intertie metering point.* This treatment is summarized in the table below with respect to each settlement variable defined in **Section 2.1** and *charge type* described in **Section 2.2** of this document.

Location of Bilateral Contract	Settlement of Selling Market Participant	Settlement of Buying Market Participant	Charge Type
Non-dispatchable *delivery point*	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the *Hourly Ontario Energy Price* (HOEP).	101
Dispatchable *delivery point*	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the 5-Minute Energy Market Price within Ontario ($EMP_h^{m,t}$).	100
Intertie Metering Point	• Debit the Physical Bilateral Contract Quantity of Energy Sold ($BCQ_{k,b,h}^{m,t}$) at the 5-minute Energy Market Price at the *Interties* ($EMP_h^{i,t}$).	• Credit the Physical Bilateral Contract Quantity of Energy Bought ($BCQ_{s,k,h}^{m,t}$) at the 5-minute Energy Market Price at the *Interties* ($EMP_h^{i,t}$).	100

These financial credits and debits are then included the overall *settlement amounts* calculated for *charge types* 100 and 101 as per the equations in **Section 2.2**.

2.5.2 The Nature of the Bilateral Contract Quantity

$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought.	Physical bilateral contract quantity of *energy* in MWh bought by *buying market participant* 'k' from *selling market participant* '*s*' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold.	Physical bilateral contract quantity of *energy* in MWh sold by *selling market participant* 'k' to *buying market participant* 'b' at *RWM* or *intertie metering point* 'm' for each *metering interval* 't' in *settlement hour* 'h'.

The submission of *physical bilateral contract data* is governed by Section 2.4 of Chapter 8 of the *IESO market rules*. Furthermore, Section 2.3 of Chapter 8 describes 2 distinct "forms" of *physical bilateral contract data* that may be submitted by the *selling market participant*. Specifically, the two forms of such data are as follows:

1. **Absolute quantities:** specifying the absolute quantity of *energy* in MWh sold by the *selling market participant* to the *buying market participant* for each *settlement hour* at a particular *delivery point* or *intertie metering point*; and
2. **Derived quantities****:** specifying that the *physical bilateral contract quantity* shall be 100% of the *energy* sold by the *selling market participant* to the *buying market participant* for each *settlement hour* as derived from a particular *delivery point* value (i.e. NOT an *intertie metering point*).

Where:

- The *delivery point* chosen by the *selling market participant* must belong to either the *selling market participant* or the buying *market participant*.
- If the *delivery point* is designated as a sub-type 'I' (injection) *delivery point*, 100% of all injected *energy* for each *metering interval* in each applicable *settlement hour* shall be used regardless of any *physical allocation data*.
- If the *delivery point* is designated as a sub-type 'W' (withdrawal) *delivery point*, 100% of all withdrawn *energy* for each *metering interval* in each applicable *settlement hour* shall be used regardless of any *physical allocation data*.

***** See derived quantities examples that follow.**

Derived Quantities Example 1: *Delivery point* belongs to the *SELLING market participant* and is a sub-type 'I' (injection) *delivery point.* (note parity with EXAMPLE 3)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	10	10	10	0	0	0	**10**	**10**	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	I	I	I	I	I	I	**W**	**W**	I	I	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	10	10	10	0	0	0	**0**	**0**	0	0	10	10
Total Quantity for the hour	50 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 2: *Delivery point* belongs to the *SELLING market participant* and is a sub-type 'W' (Withdrawal) *delivery point.* (note parity with EXAMPLE 4)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	**10**	**10**	**10**	0	0	0	10	10	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	**I**	**I**	**I**	W	W	W	W	W	W	W	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	**0**	**0**	**0**	0	0	0	10	10	0	0	0	0
Total Quantity for the hour	20 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 3: *Delivery point* belongs to the *BUYING market participant* and is a sub-type 'I' (injection) *delivery point.* (note parity with EXAMPLE 1)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	10	10	10	0	0	0	**10**	**10**	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	I	I	I	I	I	I	**W**	**W**	I	I	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	10	10	10	0	0	0	**0**	**0**	0	0	10	10
Total Quantity for the hour	50 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

Derived Quantities Example 4: *Delivery point* belongs to the *BUYING market participant* and is a sub-type 'W' (Withdrawal) *delivery point.* (note parity with EXAMPLE 2)												
metering interval	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
ENERGY QUANTITY	**10**	**10**	**10**	0	0	0	10	10	0	0	10	10
ENERGY FLOW Injection (I) Withdrawal (W)	**I**	**I**	**I**	W	W	W	W	W	W	W	I	I
BCQ value used for settlement purposes (for both the *buying* and *selling market participant*)	**0**	**0**	**0**	0	0	0	10	10	0	0	0	0
Total Quantity for the hour	20 (SEE SECTION 2.5.3 FOR THE DATA PRESENTATION OF THE BILATERAL CONTRACT QUANTITY)											

2.5.3 Time Resolution of Bilateral Contract Quantities and Rounding

Where a *physical bilateral contract* takes place at a non-dispatchable *delivery point*, the *Physical Bilateral Contract Quantity* of Energy Bought is reported by *settlement hour* as per the *market rules* (because the *Hourly Ontario Energy Price* is applied to this quantity – see Chapter 9, Section 3.3). At the same location however, the 'Physical Bilateral Contract Quantity of Energy Sold' is debited at the 5-minute energy market price. This latter, sold quantity must therefore be divided into 12, equal *metering intervals* (see Chapter 9, Section 3.1.6 of the *market rules*) and rounded to the appropriate number of significant digits (see Section 2.4 of this document). As a result, the summation of these 12, equal quantities may not equal the original, hourly value submitted in some circumstances due to this intermediate rounding. The table below summarizes this phenomenon in terms of the location sub-type and the applicable *charge type* used. The reader is directed to Section 2.4 of this document for further details.

		Location Type	Charge Type	Time Resolution used for settlements purposes	Intermediate Rounding Applied within Settlements System?
$BCQ_{s,k,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy bought.	Dispatchable *Delivery Point* (injection or withdrawal sub-type)	100	by *metering interval*	Yes – See Section 2.4
		Non-Dispatchable *Delivery Point* (injection or withdrawal sub-type)	101	by *settlement hour*	No
		Intertie metering point	100	by *metering interval*	Yes – See Section 2.4
$BCQ_{k,b,h}^{m,t}$	Physical Bilateral Contract Quantity of Energy sold.	Dispatchable *Delivery Point* (injection or withdrawal sub-type)	100	by *metering interval*	Yes – See Section 2.4
		Non-Dispatchable *Delivery Point* (injection or withdrawal sub-type)	101	by *metering interval*	Yes – See Section 2.4
		Intertie metering point	100	by *metering interval*	Yes – See Section 2.4

2.5.4 Allocation of Hourly Uplift Components Between Buying and Selling Market Participants

Hourly uplift is defined in Section 3.9.1 of Chapter 9 of the *IESO market rules* and may be "disaggregated" (sic) on *settlement statements* into its component parts as per Section 3.9.2. The following components *hourly uplift* charges may be allocated from the *buying market participant* to the *selling market participant* as per the *physical bilateral contract data* submitted by the *selling market participant* (see also, *IESO market rules*, Chapter 8, Section 2.2.2).

Hourly Uplift Component Group	Associated Charge Types	Comments
Net Energy Market Settlement Credit (NEMSC) Hourly Uplift Component (also known as the "Losses" component)	150	• This hourly uplift component is an aggregation of *charge types* 100 (NEMSC), 101 (NEMSC), 104 (TRSC), and 103 (TCRF),. The aggregation of these *charge types* mathematically resolves down to the value of the difference between AQEI, AQEW, SQEW and SQEI quantities valued at the 5-minute Energy Market Reference Price ($EMP_h^{REF,t}$) for each *metering interval* in the *settlement hour* .
Operating Reserve Settlement Credit (ORSC) Hourly Uplift Component	250 252 254	• Separate *charge types* for recovery of ORSC *settlement amounts* paid to *market participants* for each class of *operating reserve*.
Intertie Failure Charge Rebate (IFCR) Hourly Uplift Component	186	Two components as follows: 1) *Charge type* 186: an aggregation of *charge types* 135 (Real-time Import Failure Charge), 136 (Real-time Export Failure Charge), 1134 (Day-Ahead Linked Wheel Failure Charge, 1135 (Day-Ahead Import Failure Charge) and 1136 (Day-Ahead Export Failure Charge). These *charge types* are primarily rebates back to *market participants* for amounts collected under these charges.
Congestion Management Settlement Credit (CMSC) Hourly Uplift Component	155	• Includes recovery of CMSC payments for *energy* and each class of *operating reserve.*

Hourly Uplift Component Group	Associated Charge Types	Comments
Transmission Rights Settlement Credit (TRSC) Hourly Uplift Component	NOT USED	• INCLUDED WITH THE "NET ENERGY MARKET SETTLEMENT CREDIT (NEMSC) Hourly Uplift COMPONENT". • SEE NOTE ABOVE.
Transmission Charge Reduction Fund (TCRF) Hourly Uplift Component	NOT USED	• INCLUDED WITH THE "NET ENERGY MARKET SETTLEMENT CREDIT (NEMSC) Hourly Uplift COMPONENT". • SEE NOTE ABOVE.
Operating Reserve Shortfall Settlement Debit (ORSSD) Hourly Uplift Component	201 203 205	• Separate *charge types* for distribution of ORSSD *settlement amounts* received from *market participants* for shortfalls in the provision of each class of *operating reserve.*

Each hourly uplift component group (i.e. not the individual *charge types* themselves) may be selected in any combination when the *physical bilateral contract data* is submitted by the *selling market participant*. Confirmation of this selection is included within the *settlement statement* supporting data files (type "B" records). A schematic overview of the format of type "B" records may be found within Table 3-2 of the *IESO's* Technical Interface Document entitled, "Format Specification for Settlement Statement Files and Data Files".

The effect of selecting an hourly uplift component group within *physical bilateral contract data,* is the creation of a "Reallocate Quantity (RQ)".

The RQ specific to a single *physical bilateral contract* is exactly equal to the quantity of *energy* involved in the contract itself.

The RQ specific to a single *market participant* is equal to the sum of all RQ quantities for which the *market participant* is the *selling market participant*, minus the sum of all RQ quantities for which the *market participant* is the *buying market participant*.

The RQ specific to a single *market participant* for a particular hourly uplift component group is equal to the sum of all RQ quantities designated to for that particular hourly uplift component group within *physical bilateral contract data* for which the *market participant* is the *selling market participant*, minus the sum of all RQ quantities for which the *market participant* is the *buying market participant*.

This RQ quantity is then applied to the calculation of the *settlement amounts* for each *charge type* associated with the hourly uplift component group as per the table above.

Therefore, when calculating the RQ quantity for a particular hourly uplift *charge type* for *market participant* 'k' at a particular location 'm' during a particular *metering interval* 't', the quantity may be expressed as follows:

$$RQ_{k,h}^{m,t} = \sum_{s,b} [BCQ_{k,b,h}^{m,t} - BCQ_{s,k,h}^{m,t}]$$

Where all variables are defined as per **Section 2.1**.

The RQ quantity is then used to either augment or decrease the *settlement amount* for the hourly uplift *charge type* "c" as follows:

$$\sum_c^{M,T} TD_{k,h,c} \times [(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) / \sum_k^{M,T} (AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})]$$

Where all variables are defined as per **Section 2.1**.

In the event that the term,

$$(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t} + RQ_{k,h}^{m,t}) < 0$$

Where:

$$RQ_{k,h}^{m,t} < 0 \text{ and } \left|RQ_{k,h}^{m,t}\right| > \left|(AQEW_{k,h}^{m,t} + SQEW_{k,h}^{i,t})\right| \text{ and } TD_{k,h,c} > 0$$

The calculation of the applicable hourly uplift charge type "c" will yield a net credit to the *buying market participant* as a result of the reallocated quantity exceeding their actual/scheduled withdrawals of *energy* for the *metering interval* 't' in question.

The above mechanism applies to those "associated charge types" that are enumerated in the table at the beginning of this Section. See Section 2.2 for specific listings of *charge types* and their respective equations.

2.6 Exemptions from the Day-Ahead Import Failure Charge, Day-Ahead Export Failure Charge, and Day-Ahead Linked Wheel Failure Charge

2.6.1 Purpose of this Section

This section describes how Day-Ahead Import transactions are subject to an "*Offer* Price Test" in order to determine if they are exempt from the Day-Ahead Import Failure Charge (*charge type* 1135), Day-Ahead Export Failure Charge (*charge type* 1136) and Day-Ahead Linked Wheel Failure Charge (*charge type* 1134)[2].

Generally speaking the applicability of the five Intertie Failure charges[3] is affected by the "Reason Codes" attached to the applicable *interchange schedule* received by the *Settlement Process*. The impact of these Reason Codes is outlined in Table 3-5 of the *IESO* Technical Interface document entitled, "Format Specifications for Settlement Statement Files and Data Files" (IMP_SPEC_0005). As noted in that table however, day-ahead import transactions arranged in the *pre-dispatch-of-record* that include the 'AUTO''NY90' or 'ADQh', or 'ORA' Reason Codes in the resulting real-time dispatch will be further subject to an "Offer Price Test" which determines whether or not the transaction in question is in fact exempt from the Day-Ahead Failure Charges.

2.6.2 Objective of the "Offer Price Test"

The main objective of the Offer Price Test is to grant an exemption from the DA-IFC, DA-EFC and DA-LWFC for those import and export transactions that make a best effort to ensure that they are scheduled in the *real-time market*. The Offer Price Test assesses "best effort" on the basis of the offer price of the transaction itself.

2.6.3 How the Offer Price Test Works

The Offer Price Test is a simple test that is performed on the first lamination of the *real-time market* import *offer*/or export *bid*. The "first lamination" is defined by the first two *price-quantity* ("p-q") *pairs* in the *real-time market offer* curve, where:

- The first *price-quantity pair* contains an *offer* or *bid* price and a quantity of zero; and

[2] The price test for the Day-Ahead Linked Wheel Failure Charge (1134) is used to determine exemption from the RT-EFC-DALW and RT-IFC-DALW portions only.
[3] Specifically, the Real-time Import Failure Charge (*charge type* 135), the Real-time Export Failure Charge (*charge type* 136), the Day-Ahead Import Failure Charge (*charge type* 1135), the Day-Ahead Export Failure Charge (*charge type* 1136) and the Day-Ahead Linked Wheel Failure Charge (*charge type* 1134).

- The second *price-quantity pair* contains the same *offer* or *bid* price as the first *price-quantity pair* and a non-zero quantity.

The Offer Price Test applies to any situation in which a day-ahead import or export transaction has a Reason Code, 'AUTO', 'NY90' 'ADQh', or 'ORA' assigned to the corresponding real-time import or export transaction at the same location. It is applicable to *any intertie metering point* where the underlying constrained scheduling point (CSP) is a "source" (i.e. applicable to imports only) or a "sink" (i.e. applicable to exports only).

If the transaction fails this test; it will not receive exemption status from the DA-IFC or DA-EFC. If the transaction passes this test, then it will be exempted from the DA-IFC or DA-EFC – without actually changing the Reason Code itself.

2.6.4 Input Data:

$DA_DQSI_{k,h}^{i,t}$	=	Day-ahead constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'
$PD_DQSI_{k,h}^{i,t}$	=	*Pre- dispatch* constrained quantity scheduled for injection by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.
$PD_BE_{k,h}^{i,t}$	=	*Energy offers* submitted in Pre-dispatch, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2
- MMCP	=	The *Minimum Market Clearing Price*.
$DA_DQSW_{k,h}^{i,t}$		Day-ahead constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during metering interval 't' of settlement hour 'h'
$PD_DQSW_{k,h}^{i,t}$		*Pre- dispatch* constrained quantity scheduled for withdrawal by *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement hour* 'h'.
$PD_BL_{k,h}^{i,t}$		*Energy bids* submitted in *pre-dispatch*, represented as an N by 2 matrix of *price-quantity pairs* for each *market participant* 'k' at *intertie metering point* 'i' during *metering interval* 't' of *settlement*

hour 'h' arranged in ascending order by the offered price in each *price quantity pair* where offered prices 'P' are in column 1 and offered quantities 'Q' are in column 2

+MMCP = The *Maximum Market Clearing Price*.

2.6.5 Decision Logic Applied During the Offer Price Test for Import Transactions:

PART 1:

The first part of the test ensures that the original *schedule-of-record* schedule ($DA_DQSI_{k,h}^{i,t}$) for the import transaction is indeed GREATER THAN the resulting *Pre-dispatch schedule* ($PD_DQSI_{k,h}^{i,t}$) over the course of *settlement hour* 'h'.

IF $\sum^{T} DA_DQSI_{k,h}^{i,t} > \sum^{T} PD_DQSI_{k,h}^{i,t}$

THEN

Proceed to PART 2

ELSE

END of the test for this transaction.

PART 2:

The second part of the test ensures that the first lamination (i.e. as defined by the first 2 *price-quantity pairs*) of the offer curve submitted into the *pre-dispatch scheduling process*:

1) Was large enough to cover the entire quantity of the transaction originally scheduled by the *schedule-of-record* at the same *market participant/intertie metering point* combination (commonly referred to as a "MP/MSP/CSP triplet"); and,
2) Was offered at the *Minimum Market Clearing Price* (*-MMCP*).

The test is as follows:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $PD_BE_{k,h}^{i,t}$ (see above for definition).

IF B[2,2] ≥ $DA_DQSI_{k,h}^{i,t}$ AND B[2,1] = -MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the DA-IFC.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the DA-IFC.

Implications:

- A day-ahead import transaction must be constrained down to a level lower than its original *schedule-of-record* schedule in order to receive exemption status;
- The entire amount of the constrained portion of the transaction must have been offered into the *Pre-dispatch* at *–MMCP* in order to receive exemption status (compare Figures 2-1 and 2-2 to see examples where this condition is met and not met respectively); and
- Only the first lamination (i.e. the first 2 p-q pairs) of the Pre-dispatch offer curve for each import transaction are relevant in performing this test (due to the existing market rule requirement that offer prices must be monotonically increasing).

2.6.6 Decision Logic Applied During the Offer Price Test for Export Transactions:

PART 1:

The first part of the test ensures that the original *schedule-of-record* ($DA_DQSW_{k,h}^{i,t}$) for the export transaction is indeed GREATER THAN the resulting *Pre-dispatch schedule* ($PD_DQSW_{k,h}^{i,t}$) over the course of *settlement hour* 'h'.

IF $\sum^{T} DA_DQSW_{k,h}^{i,t} > \sum^{T} PD_DQSW_{k,h}^{i,t}$

THEN

Proceed to PART 2

ELSE

END of the test for this transaction.

PART 2:

The second part of the test ensures that the first lamination (i.e. as defined by the first 2 *price-quantity pairs*) of the offer curve submitted into the *Pre-dispatch scheduling process*:

1) Was large enough to cover the entire quantity of the transaction originally scheduled by the *schedule-of-record* at the same *market participant/intertie metering point* combination (commonly referred to as a, "MP/MSP/CSP triplet"); and,
2) Was offered at the *Maximum Market Clearing Price* (+*MMCP*).

The test is as follows:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $BL_{k,h}^{i,t}$ (see above for definition).

IF B[2,2] ≥ $DA_DQSW_{k,h}^{i,t}$ AND B[2,1] = +MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the DA-EFC.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the DA-EFC.

Implications:

- A day-ahead export transaction must be constrained down to a level lower than its original *schedule-of-record* in order to receive exemption status;
- The entire amount of the constrained portion of the transaction must have been offered into the *Pre-dispatch* at +*MMCP* in order to receive exemption status (compare Figures 2-1 and 2-2 to see examples where this condition is met and not met respectively); and
- Only the first lamination (i.e. the first 2 p-q pairs) of the Pre-dispatch offer curve for each export transaction are relevant in performing this test (due to the existing *market rule* requirement that *offer* prices must be monotonically decreasing).

2.6.7 Decision Logic Applied During the Offer Price Test for Linked Wheel Transactions:

The test seeks to demonstrate a best efforts attempt to schedule both the import and export legs of a day-ahead linked wheel (DALW) transaction through both:

- A Pre-dispatch bid at positive maximum market clearing price (+MMCP) for a quantity at least equal to the day-ahead export quantity, and
- A Pre-dispatch offer at negative maximum market clearing price (–MMCP) for a quantity at least equal to the day-ahead import quantity.

For import leg of the linked wheel, the decision logic for the price test is described in Section 2.6.5 with the following amendment:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $PD_BE_{k,h}^{i,t}$ (see above for definition).

IF $B[2,2] \geq DA_DQSI_{k,h}^{i,t}$ AND B[2,1] = -MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the **RT-IFC-DALW**.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the **RT-IFC-DALW**.

For export leg of the linked wheel, the decision logic for the price test is described in Section 2.6.6 with the following amendment:

For each *metering interval* 't' at *intertie metering point* 'i' where the transaction passed PART 1 for *settlement hour* 'h':

Let 'B' be matrix $BL_{k,h}^{i,t}$ (see above for definition).

IF $B[2,2] \geq DA_DQSW_{k,h}^{i,t}$ AND B[2,1] = +MMCP

THEN

Allow Reason Code to remain as-is, but exempt the transaction from the **RT-EFC-DALW**.

ELSE

Allow Reason Code to remain as-is, and do NOT exempt the transaction from the **RT-EFC-DALW**.

Figure 2-1 – Example of an Import Transaction that PASSES the "Offer Price Test"

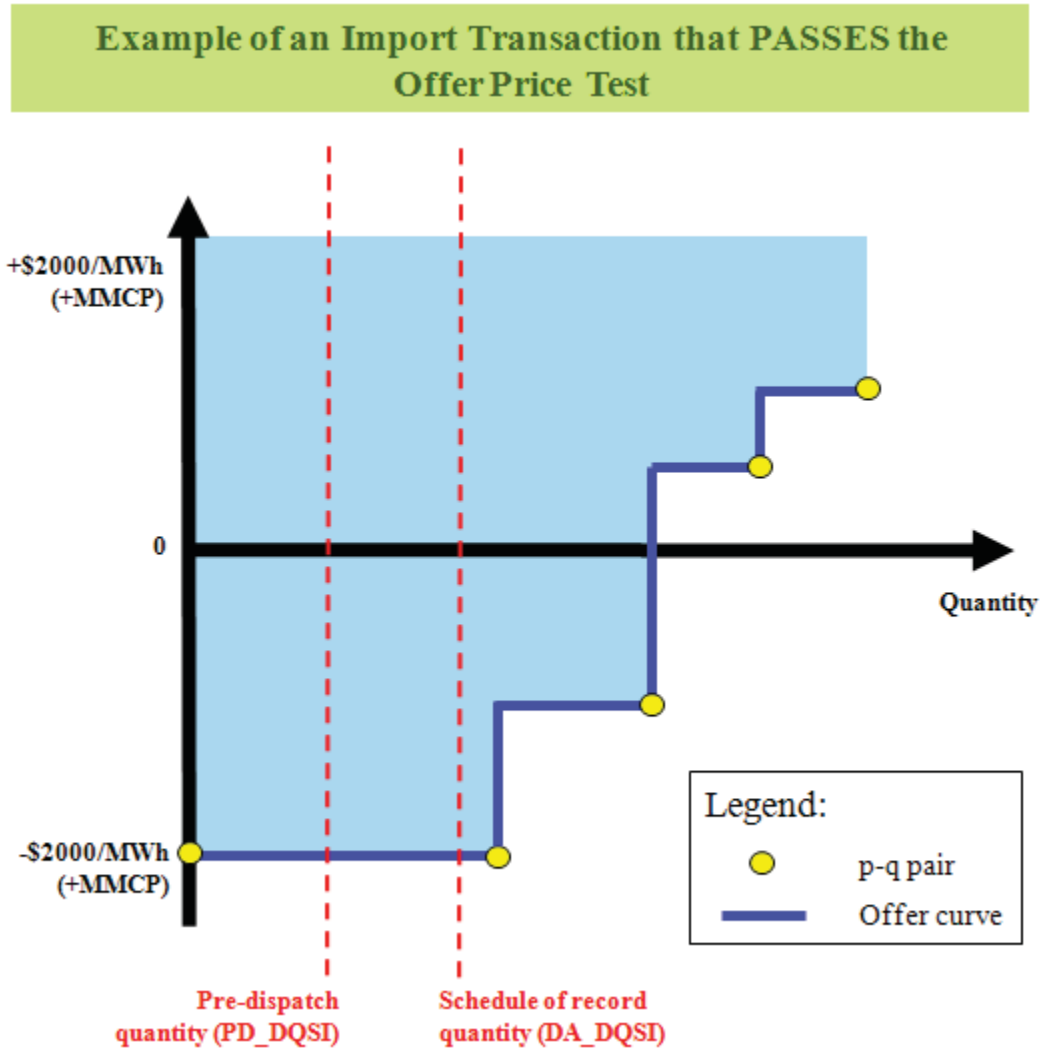


Figure 2-2 – Example of an Import Transaction that FAILS the "Offer Price Test"

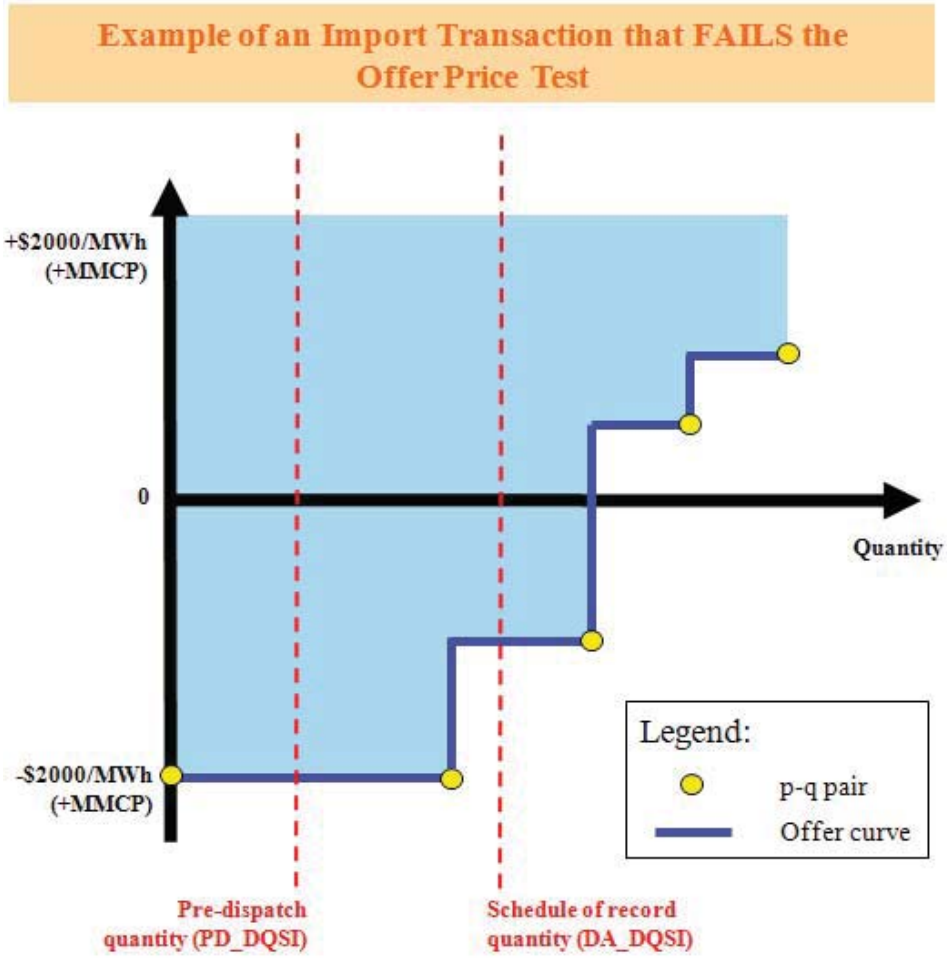


Figure 2-3 – Example of an Export Transaction that PASSES the "Offer Price Test"

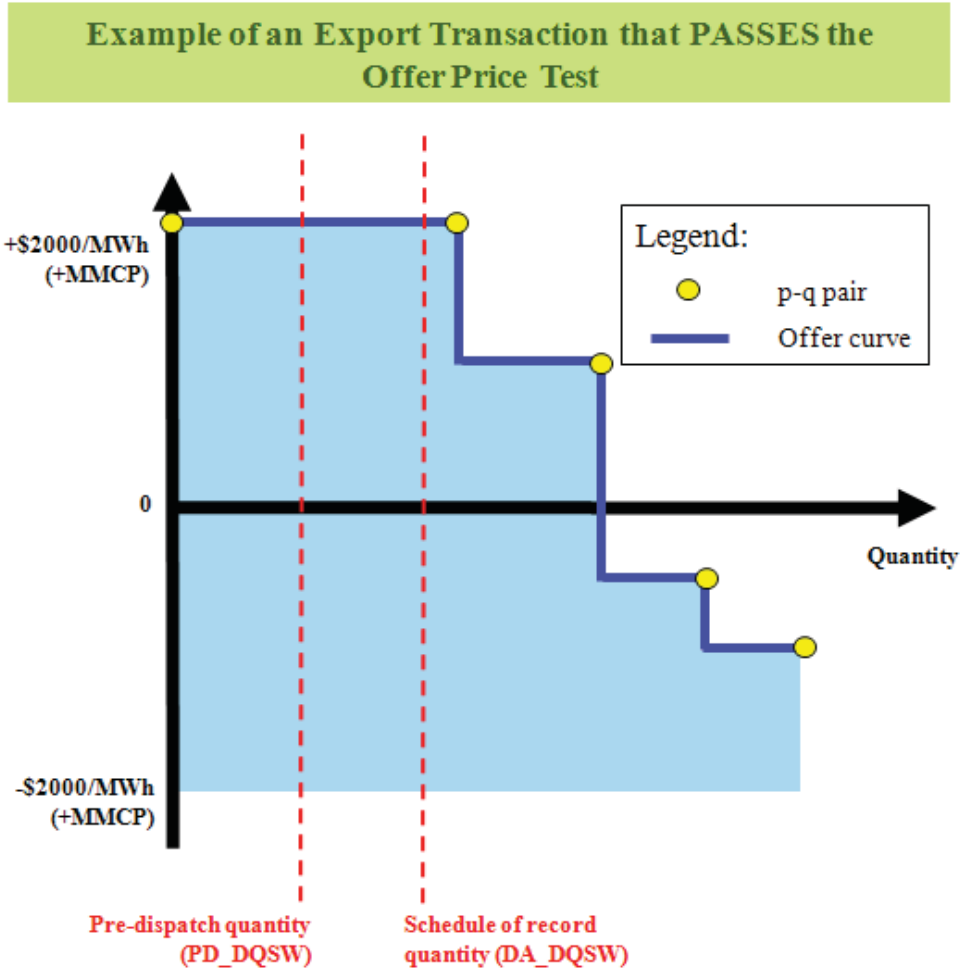
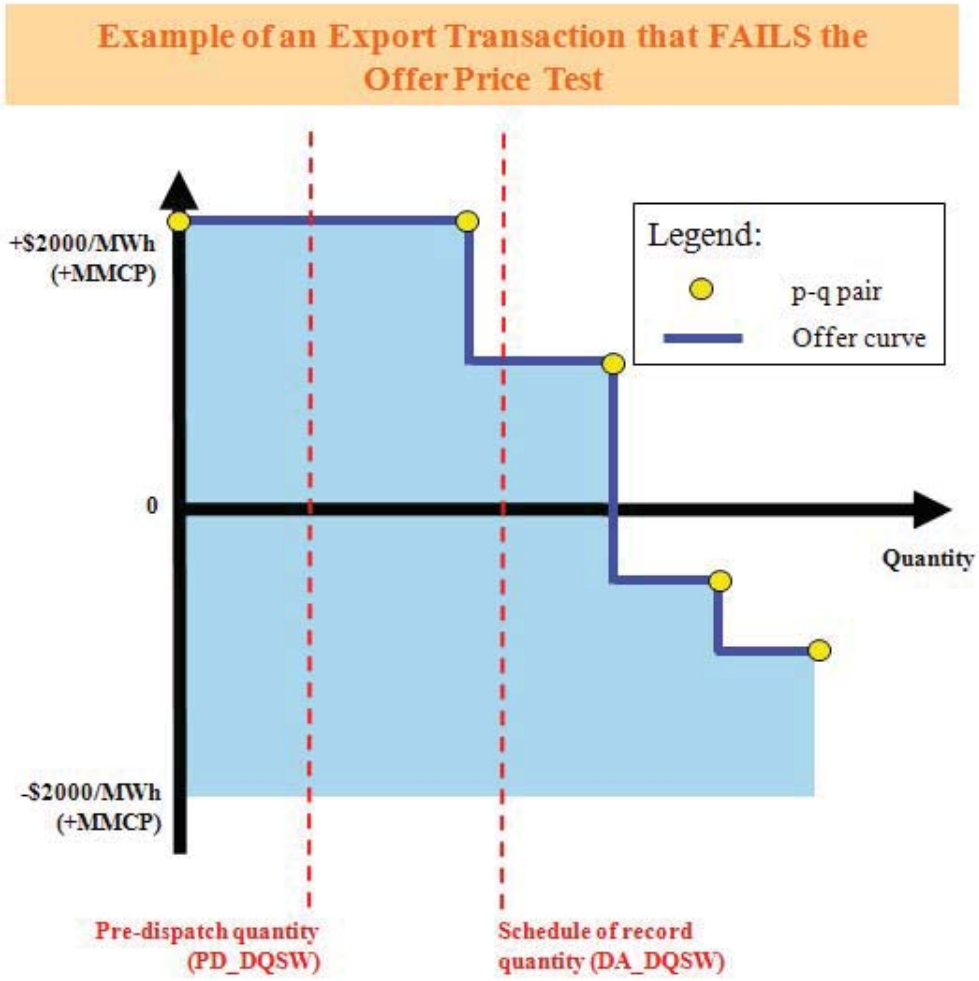


Figure 2-4 – Example of an Export Transaction that PASSES the "Offer Price Test"



- End of Section -

References

Document Name	Doc ID
Market Rules	MDP_RUL_0002
Format Specification for Settlement Statement Files and Data Files	IMP_SPEC_0005
Ontario Energy Board: Ontario Transmission Rate Schedules EB-2007-0759	EB-2007-0759
Order-in-Council 137/2008 Ontario Power Generation Rebate	OIC 137/2008
Ontario Regulation 442/01 "Rural or Remote Electricity Rate Protection	442/01
Ontario Regulation 493/01 "Debt Retirement Charge – Rates and Exemptions"	493/01
Ontario Regulation 494/01 "Debt Retirement Charge Administration"	494/01
Legislative Assembly of Ontario S.O. 2003, Chapter 8 "Bill 4, An Act to amend the *Ontario Energy Board Act, 1998* with respect to electricity pricing." **Royal Assent:** December 18, 2003	Bill 4
Regulations made pursuant to Bill 4 Ontario Regulation 42/04 made under the *Ontario Energy Board Act, 1998*. Ontario Regulation 43/04 made under the *Ontario Energy Board Act, 1998*.	 42/04 43/04
Legislative Assembly of Ontario, Bill 210 – "Electricity Pricing, Conservation and Supply Act, 2002." S.O. 2002, Chapter 23 **Formal Title:** "An Act to amend various Acts in respect of pricing, conservation and supply of electricity an in respect of other matters related to electricity." **Royal Assent:** December 9, 2002	Bill 210

Document Name	Doc ID
Regulations made pursuant to BILL 210 "Electricity Pricing, Conservation and Supply Act, 2002." **Regulation 339/02** (Under the *Ontario Energy Board Act, 1998*) "Electricity Pricing" – amended by regulation 433/02 **Regulation 341/02** (Under the *Ontario Energy Board Act, 1998*) "Compensation and Set-Offs Under Part V of the Act" – amended by regulation 434/02 **Regulation 342/02** (Under the *Ontario Energy Board Act, 1998*) "Payments to the IMO" – revoked by regulation 432/02 **Regulation 432/02** (Under the *Ontario Energy Board Act, 1998)* "Revoking Ontario Regulation 342/02 (Payments to the IMO)" **Regulation 433/02** (Under the *Ontario Energy Board Act, 1998*) "Amending Ontario Regulation 339/02 (Electricity Pricing)" **Regulation 434/02** (Under the *Ontario Energy Board Act, 1998)* "Amending Ontario Regulation 341/02 (Compensation and Set-Offs Under Part V of the Act)" **Regulation 435/02** (Under the *Ontario Energy Board Act, 1998*) "Payments re Section 79.4 of the Act" **Regulation 436/02** (Under the *Ontario Energy Board Act, 1998*) "Payments re Various Electricity-Related Charges" **Regulation 330/09** (Under the *Ontario Energy Board Act, 1998*) "Cost recovery re section 79.1 of the Act"	339/02 (amended by 433/02) 341/02 (amended by 434/02) 342/02 (revoked by 432/02) 433/02 434/02 435/02 436/02 330/09
***Ontario Energy Board*, *Independent Electricity Market Operator* Licence EI-2003-0088, issued on July 30, 2003**	**EI-2003-0088**
Legislative Assembly of Ontario, Bill 100 – "Electricity Restructuring Act, 2004" **Royal Assent:** December 9, 2004 Subject to regulations made pursuant to the "Electricity Restructuring Act, 2004" once proclaimed into force: Ontario regulation 427/04 "Payments to the Financial Corp. re Section 78.2 of the Act" Ontario regulation 428/04 "Payments re Section 79.4 of the Act" Ontario regulation 398/10 Amending Ontario regulation 429/04 "Adjustments Under Section 25.33 of the Act" Ontario regulation 430/04 "Payments re Section 25.33 of the Act"	BILL 100 See also, Ontario e-laws website for official Ontario Government Regulation ID numbers at: http://www.e-laws.gov.on.ca

Document Name	Doc ID
Ontario regulation 431/04 "Payments re Section 25.34 of the Act" Section 78.3 of the (Ontario Energy Board) Act Section 78.4 of the (Ontario Energy Board) Act Section 78.5 of the (Ontario Energy Board) Act	
Ontario regulation 53/05 made under *OEB Act, 1998* re "Payments under Section 78.1 of the Act" Ontario regulation 98/05 made under *OEB Act, 1998* re "Payments re Various Electricity-Related Charges" Ontario Regulation 66/10 made under *OEB Act, 1998* re "Assessments for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs"	BILL 100 See also, Ontario e-laws website for official Ontario Government Regulation ID numbers at: http://www.e-laws.gov.on.ca/
Ontario Clean Energy Benefit Act, 2010, Ontario Regulation 495/10.	
Ontario Regulation 314/15 "Ontario Electricity Support Program"	314/15

– End of Document –

RE_ KPMG Draft opinion.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: KPMG Draft opinion
Date: Monday, August 28, 2017 13:15:38

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Not from us…you may want to check with energy, I believe it was ieso white paper which may have been described as an opinon

Kimberly Marshall | VP, Corporate Services & CFO

Independent Elec

RE_ KPMG and Stikeman opinions.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: KPMG and Stikeman opinions
Date: Tuesday, February 13, 2018 09:15:13

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Ok will see if today or tomorrow is possible

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide S

RE_ KPMG and Stikeman opinions.rtf

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To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: KPMG and Stikeman opinions
Date: Tuesday, February 13, 2018 09:15:13

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Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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-----Original Message-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 13, 2018 7:32 AM
To: Kim Marshall
Subject: Re: KPMG and Stikeman opinions

Need it and time to review before we send you our memo.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Kim Marshall
Sent: Monday, February 12, 2018 8:14 PM
To: Veinot, Cindy (TBS)
Subject: Re: KPMG and Stikeman opinions

This week - ok?

Sent from my iPad

On Feb 12, 2018, at 6:56 PM, Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

Hi Kim - do you have an ETA on these?

Thanks,

Cindy
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RE_ Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

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From: Cox, Hilary (ENERGY)
Sent: April 3, 2017 3:26 PM
To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); R

RE_ Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
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Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

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

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

RE_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:02:11

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About 12;10 yes, send me call in number

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 10:01 AM
To: Kim Marshall; Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Ok – any chance you could dial into the meeting at noon?

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: October 25, 2017 10:00 AM
To: Veinot, Cindy (TBS); Kandeepan, Ken (OFA)

Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Sorry. I am in Mississauga til 12 on a meeting I can't move. Follow up afterwards?

Kimberly Marshall | VP, Corporate Services & CFO

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

Hi Ken – I was speaking to Michael Puskaric this morning and in the course of our conversation, I offered to provide them with a briefing on Fair Hydro. Given we are meeting with them next Monday, we thought we could tack it on to the end of the meeting on Financial Instruments. Do you think the FI discussion will take 2 hours?

Kim – I would love to have you there as well for the Fair Hydro portion of the

meeting. Are you available next Monday – from 11:30 to 12:30 to be at CPA Canada (Wellington and Blue Jays way). Our meeting with them on financial instruments is scheduled from 10-12, although I'm hoping we might be able to work through that discussion in 1.5 hours.

Thanks all,

Cindy

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RE_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:02:11

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About 12;10 yes, send me call in number

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120 Adel

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CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:00:01

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Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (41

RE_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Meeting with PSAB on Oct 30
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Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

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Cindy

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Date: Wednesday, October 25, 2017 10:00:01

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Sorry. I am in Mississauga til 12 on a meeting I can’t move. Follow up afterwards?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (41

RE_ Memo Outline.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Memo Outline
Date: Thursday, May 25, 2017 19:01:09
Attachment 1: image001.gif
Attachment 2: Memo Outline V1np_cv.docx

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Sent: May 24, 2017 8:51 PM
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Cc: Suzie Gignac; Blake Langill; Veinot, Cindy (TBS); Hosick, Sarah (TBS)
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From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: KPMG and Stikeman opinions
Date: Monday, February 12, 2018 21:14:25

This week - ok?

Sent from my iPad

On Feb 12, 2018, at 6:56 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim – do you have an ETA on these?
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> Thanks,
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CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: Friday, August 25, 2017 08:38:21

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Noon today? That's a stretch

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> Noon is fine
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Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: Market accounts HBN - August 23 2017 v1

Hi Kim – Attached is a house book note for the market accounts – there is one question for you in there re: describing IESO's role with the LDCs (I took the description for the role with the generators from KPMG's memo, but didn't see a similar one for LDCs).

Also – Bharat is going to reach out to Susan or yourself re: why the amounts owed to the generators in 2014 in the OPA f/s (less than $500M) are so much lower than the balances at the end of March 2017 ($1.6 billion) – are we comparing apples to oranges?

Thanks,

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Re_ Market accounts HBN - August 23 2017 v1.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: Friday, August 25, 2017 07:22:24

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when do you need comments back from us? is mon ok?

I will have to look but off the top of my head I wonder if 2014 was the winter of the polar vortex (very cold) and limited gas availability

Re_ Market accounts HBN - August 23 2017 v1.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: Friday, August 25, 2017 08:38:21

Noon today? That's a stretch

Sent from my iPad

> On Aug 25, 2017, at 8:31 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> Noon is fine
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Kim Marshall
> Sent: Friday, August 25, 2017 7:22 AM
> To: Veinot, Cindy (TBS)
> Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
> Subject: Re: Market accounts HBN - August 23 2017 v1
>
>
>
> when do you need comments back from us? is mon ok?
>
>
> I will have to look but off the top of my head I wonder if 2014 was the winter of the polar vortex (very cold) and limited gas availability resulting in high hoep? Global adjustment is the difference between contract price and HOEP the hourly electricity dispatch price set by the market.
>
>
> _____
> From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
> Sent: August 24, 2017 7:09 PM
> To: Kim Marshall
> Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
> Subject: Market accounts HBN - August 23 2017 v1
>
>
> Hi Kim – Attached is a house book note for the market accounts – there is one question for you in there re: describing IESO's role with the LDCs (I took the description for the role with the generators from KPMG's memo, but didn't see a similar one for LDCs).
>
>
>
> Also – Bharat is going to reach out to Susan or yourself re: why the amounts owed to the generators in 2014 in the OPA f/s (less than $500M) are so much lower than the balances at the end of March 2017 ($1.6 billion) – are we comparing apples to oranges?
>
>
>
> Thanks,
>
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>

Re_ Market accounts HBN - August 23 2017 v1.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: Friday, August 25, 2017 08:38:21

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Noon today? That's a stretch

Sent from my iPad

> On Aug 25, 2017, at 8:31 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> Noon is fine
>
> Sent from my BlackBerry 10 smartpho

Re_ Meeting re Provincial Protection & Assurances Agreement.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting re Provincial Protection & Assurances Agreement
Date: Tuesday, July 11, 2017 18:21:36
Attachment 1: ATT82855 1.jpg
Attachment 2: image5379bf.JPG

Hi Cindy, I just updated the invite with this information -- we're at 79 Wellington Street West, 33rd floor. Let me know if you need me to forward you the invite. Thanks,

Sent from my iPhone

On Jul 11, 2017, at 5:40 PM, Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

Hi Rima – could you please send the address for Tory's – thanks,

Cindy Veinot
Provincial Controller and Assistant Deputy Minister, Office of the Provincial Controller
Treasury Board Secretariat
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario M7A 1Y7

T: 416-325-8017
E: cindy.veinot@ontario.ca<mailto:cindy.veinot@ontario.ca>

[cid:image001.png@01D20DD0.23D9CA40]<ATT82855 1.jpg>

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com<http://www.torys.com>
[Torys LLP]<http://www.torys.com>

-----Original Appointment-----
From: Montgomery, Kaitlin (MOF) On Behalf Of Ramchandani, Rima
Sent: July 11, 2017 10:47 AM
To: Ramchandani, Rima
Subject: FW: Meeting re Provincial Protection & Assurances Agreement
When: July 12, 2017 12:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys Boardroom 33S3 & S4

-----Original Appointment-----
From: rpalikrousis@torys.com<mailto:rpalikrousis@torys.com> [mailto:rpalikrousis@torys.com] On Behalf Of Ramchandani, Rima
Sent: July 10, 2017 3:35 PM
To: Ramchandani, Rima; Mansoori, Nina; 'leslie.wong@opg.com<mailto:leslie.wong@opg.com>'; 'john.s.lee@opg.com<mailto:john.s.lee@opg.com>'; 'ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>';

'tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>';
'jenny.jorda@opg.com<mailto:jenny.jorda@opg.com>'; Montgomery, Kaitlin (MOF); Nelms, Scott (MOF);
'RSebastiano@osler.com<mailto:RSebastiano@osler.com>';
'PMilligan@osler.com<mailto:PMilligan@osler.com>';
'Katrina.Niehaus@gs.com<mailto:Katrina.Niehaus@gs.com>';
'MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>';
'aobrian@hunton.com<mailto:aobrian@hunton.com>'
Cc: Palikrousis, Rita
Subject: Meeting re Provincial Protection & Assurances Agreement
When: July 12, 2017 12:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys Boardroom 33S3 & S4

Good Afternoon, Please feel free to forward this invitation to others from your organization that will be attending. Thank you.

Dial-in: 1.800.600.0998
Access Code: 8657666#

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<ATT82855 1.jpg>

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ATT82855 1.pdf

TBS

image5379bf.pdf

TORYS
LLP

Re_ Meeting tomorrow.rtf

From: Hume, Steen (ENERGY) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Ouellette, Lois A [louellette@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Meeting tomorrow
Date: Wednesday, February 01, 2017 20:19:38
Attachment 1: @

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View the original item

Thanks Cindy. Let's discuss tomorrow.

Steen

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Veinot, Cindy (TBS)
Sent: Wednesday, February 1, 2017 7:01 PM
To: Hume,
Attachments:
image001.png (6 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201703078910032~201702020019390000~Z~C01494C73B145ADB0037F3FAD2D22C91&AttachmentId=1image001.png

Re_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:49:34

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Better, Sarah can connect with georgia, thx

Sent from my iPad

On Oct 25, 2017, at 10:09 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> See subsequent message from Ken – meeting

Re_ Meeting with PSAB on Oct 30.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Meeting with PSAB on Oct 30
Date: Wednesday, October 25, 2017 10:49:34

Better, Sarah can connect with georgia, thx

Sent from my iPad

On Oct 25, 2017, at 10:09 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> See subsequent message from Ken – meeting to be rescheduled – stay tuned!
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** October 25, 2017 10:02 AM
> **To:** Veinot, Cindy (TBS); Kandeepan, Ken (OFA)
> **Cc:** Hosick, Sarah (TBS)
> **Subject:** RE: Meeting with PSAB on Oct 30
>
> About 12;10 yes, send me call in number
>
> **Kimberly Marshall** | VP, Corporate Services & CFO
>
> Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
>
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
>
> Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
>
> ***Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.***
>
> Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn:

saveONenergy

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 10:01 AM
To: Kim Marshall; Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Ok – any chance you could dial into the meeting at noon?

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: October 25, 2017 10:00 AM
To: Veinot, Cindy (TBS); Kandeepan, Ken (OFA)
Cc: Hosick, Sarah (TBS)
Subject: RE: Meeting with PSAB on Oct 30

Sorry. I am in Mississauga til 12 on a meeting I can't move. Follow up afterwards?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn:

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: October 25, 2017 9:53 AM
To: Kandeepan, Ken (OFA); Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Meeting with PSAB on Oct 30

Hi Ken – I was speaking to Michael Puskaric this morning and in the course of our conversation, I offered to provide them with a briefing on Fair Hydro. Given we are meeting with them next Monday, we thought we could tack it on to the end of the meeting on Financial Instruments. Do you think the FI discussion will take 2 hours?

Kim – I would love to have you there as well for the Fair Hydro portion of the meeting. Are you available next Monday – from 11:30 to 12:30 to be at CPA Canada (Wellington and Blue Jays way). Our meeting with them on financial instruments is scheduled from 10-12, although I'm hoping we might be able to work through that discussion in 1.5 hours.

Thanks all,

Cindy

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Re_ Monday availability _.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Picard, Michel [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Georgia Ritchie-Wust [georgia.ritchie-wust@ieso.ca]
Subject: Re: Monday availability ?
Date: Monday, November 20, 2017 10:49:07

Georgia and jack can you pls arrange even if at end of day. Thx

Sent from my iPhone

On Nov 20, 2017, at 9:47 AM, Picard, Michel <mpicard@kpmg.ca> wrote:

> anytime
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** Friday, November 17, 2017 5:20 PM
> **To:** Cindy Veinot <Cindy.Veinot@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>
> **Subject:** Monday availability ?
>
> For call to prep for Tuesday Cpa meeting.
>
> Sent from my iPhone
>
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Re_ Move to 11am_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Move to 11am?
Date: Friday, August 25, 2017 10:11:35

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View the original item

Just call my cell 4165457202

Sent from my iPad

> On Aug 25, 2017, at 10:09 AM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:
>
> Sure, (cindy is in a meeting until 11, so it may be a f

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: @

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce
Attachments:
WSComparison__6714670_1-_6712834_3.pdf (792 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855682~201704262215340000~Z~D13695F16A341173666E42C91A2A0BE1&AttachmentId=1WSComparison__6714670_1-_6712834_3.pdf

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855682~201704262215340000~Z~D13695F16A341173666E42C91A2A0BE1&AttachmentId=2SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Saulnier, Brett [bsaulnier@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 17:58:21
Attachment 1: image0d0a3f.JPG
Attachment 2: Proposed Alternative for Fair Allocation Calculation v2.docx
Attachment 3: Blackline -Fair Allocation Provisions - Proposed Alternative.pdf

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All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

<u>Major Issues</u>

1. It is critically important to have a definition of “transfer” that is broad enough. We

had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services

Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister's rights will not extend to OPG's rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG's issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for “Standing and Remedies” of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

Minor Points

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of “refinancing” doesn’t work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-26-17 12:39 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)

Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and

keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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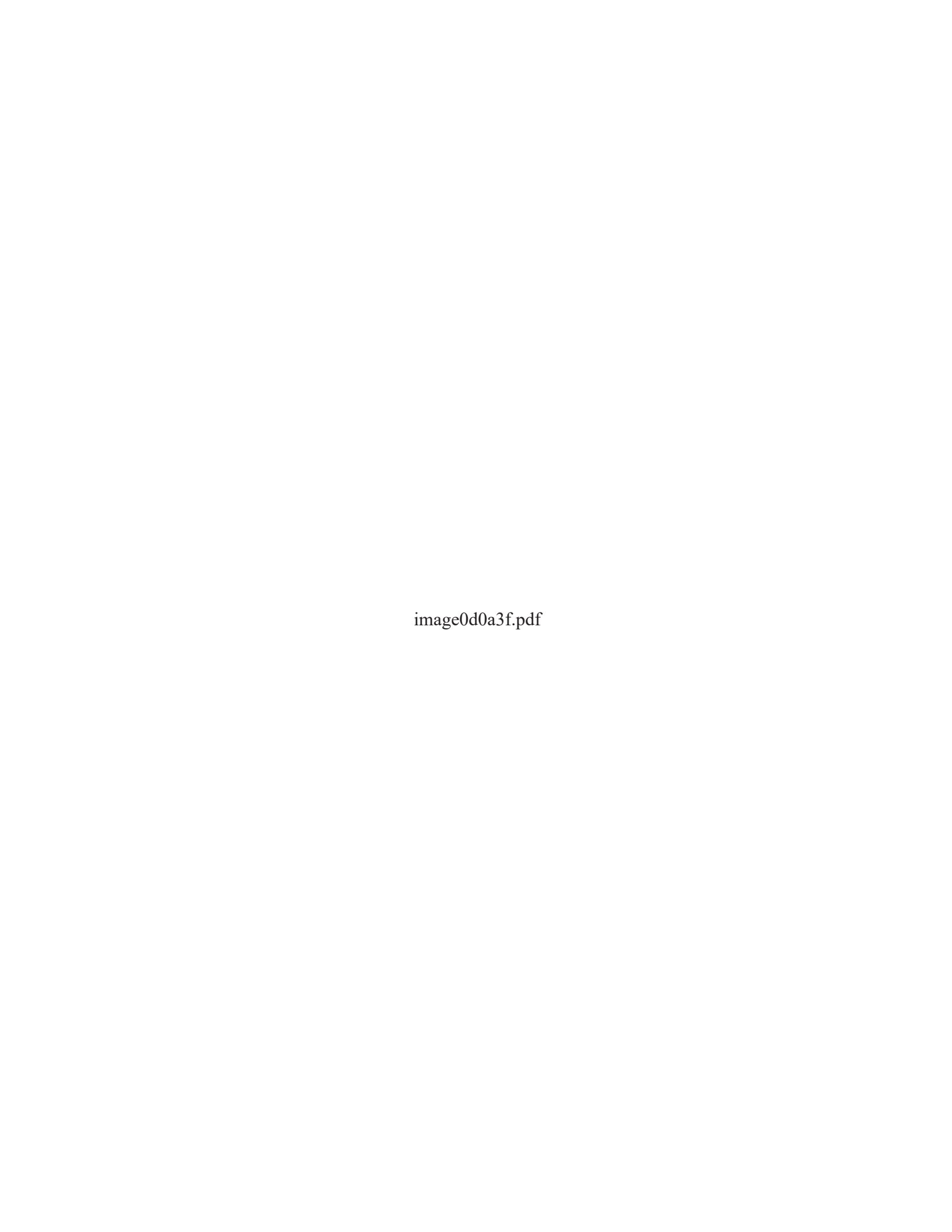
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FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~by the date that is **[20]** business days after the day this Act receives Royal Asset.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

~~Notification~~Provision of updates to Minister

(4) The Financial Services Manager shall ~~notify~~provide the Minister ~~of the methods used to calculate~~written notification of any updates to the calculation the fair allocation amount ~~and any changes to those methods~~made pursuant to subsection (1.3).

Effective date

(~~6~~5) The fair allocation calculation or an amendment ~~to~~ the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Saulnier, Brett [bsaulnier@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 17:58:21
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All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importan

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image0d0a3f.JPG (5 KB)

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Proposed Alternative for Fair Allocation Calculation v2.docx (15 KB)
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Blackline -Fair Allocation Provisions - Proposed Alternative.pdf (112 KB)
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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
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All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies t

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New Sections.DOCX (25 KB)
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RE_ Ontario Fair Hydro Plan.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
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All – please find attached OPG and Torys’ consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing revi

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Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.DOCX (83 KB)
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RE_ Ontario Fair Hydro Plan.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
Attachment 1: image182d05.JPG
Attachment 2: Blackline_(MOE-Draft).pdf
Attachment 3: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.DOCX

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com;

Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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416-212-8392

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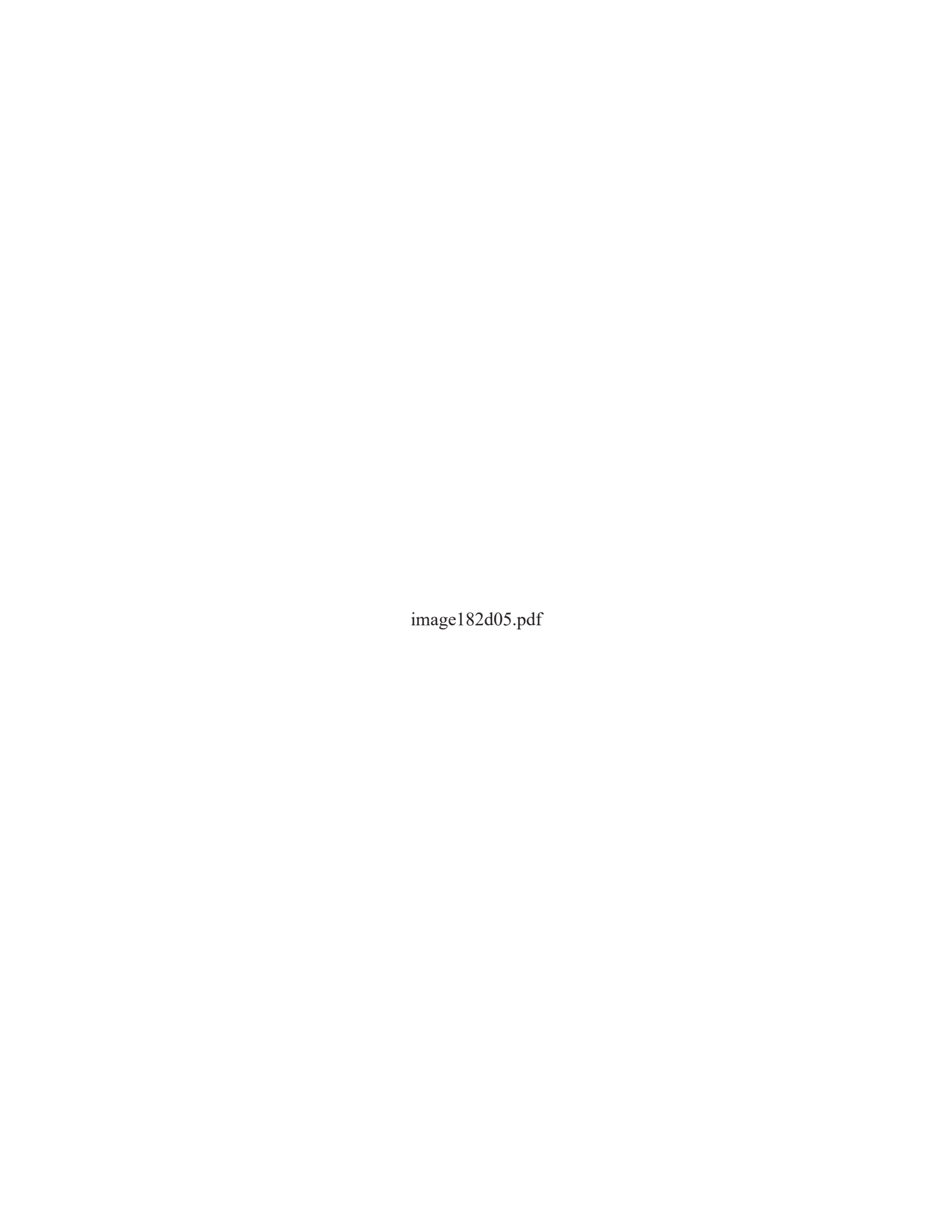
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Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable **the** phasing out of coal fired generation, ~~modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom~~**the modernization of electricity generation facilities**,[2] and conservation and demand management **initiatives**.

The Government of Ontario is committed to ensuring that the costs of these investments~~, and the raising of money to fund the investments,~~[3] are allocated fairly among present and future generations of consumers~~.~~ **, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. [NTD: Delete references to "raising of money". This may imply a tax scheme. The**

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] ~~Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits ~~determined~~ to be derived by ~~the~~**[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs**, as determined by ■ and described in ■**; ("French")

"clean energy costs" means, in respect of a reference period, ~~the value of~~ the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the ~~estimated costs~~**amounts** to be ~~incurred~~**reflected in adjustments made** by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for~~,

(i) **contracts for** renewable energy generation or capacity,

(ii) **contracts for** conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) **contracts for** natural gas generation ~~and~~**or** capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, ~~or~~

(v) payments ~~made or expected to be made~~ under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[43] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the ~~determination of~~**adjustment to** the rate payable for electricity **determined** in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** **for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights**]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

[43] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment ~~asset~~**interest** owner ~~under section x~~**as prescribed in the Regulations**; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the ~~investment asset~~**property rights** created as described in section 22xx; ("French")

"investment ~~asset~~**interest** owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset~~, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred~~;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity **and related services [NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means **each of**,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, **and** **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the ~~Fair Allocation~~**Financing** Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment ~~asset~~**interest** owner by applying the net proceeds obtained by the **investment interest** owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity **and related services**, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" ~~means~~**includes** an assignment, conveyance, disposition or sale **and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which**> *IESO purports to dispose of* <**or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest**; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable ~~[by the consumer?]~~ under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

[NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to ~~the use of~~ electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the< *IESO purports to dispose of* >its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[54]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~**one or more** provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect **the validity or enforceability of** a funding obligation ~~that was~~ incurred under this Act before the day that the provision ~~was~~**is** held to be invalid or ~~ceased~~**ceases** to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[65]

[54] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[65] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) to ~~ensure that clean energy costs are fairly~~**fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; [NTD: See comments above regarding references to raising money] and [NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time** ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation; and~~**"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not **do or cause or permit any agent of the Crown to** do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection ~~or,~~ remittance **or recovery** of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce**, alter or impair** the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset**, investment interest** or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving **or amending** of a regulation under this **Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other** Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the ~~Province of Ontario~~**Crown** with any person in respect of this Act, **or in relation to this Act,** including agreements regarding financial

commitments, financial arrangements, indemnities**, guarantees** or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations
(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act **as of May 1, 2017**; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by **[**the specified consumer, by an agent of the specified consumer or by**] [NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination
(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be

payable by a representative consumer in order for the representative consumer to receive ~~a~~**[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any **licensed** unit sub-meter provider who provides unit sub-metering for **the sub-meter customer on behalf of** the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate ~~mentioned~~**described** in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or **licensed** unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the ~~applicable~~ rate **described in subsection (2)** receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

~~Specified~~Electricity vendor to invoice specified consumers ~~to pay clean energy adjustment~~

8xx. ~~(1~~ **(1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. [NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

>Electricity vendor to collect<

*> (2) Each electricity vendor shall, as an agent of the IESO and the investment <**interest owners, collect amounts in respect of**> the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].* <

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes **an amount in respect of** a clean energy adjustment, a specified consumer shall pay ~~the clean energy adjustment~~**such amount** to the electricity vendor, as agent of **IESO and** the investment ~~asset~~**interest** owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(~~2~~**4**) For greater certainty, ~~subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment is ~~inconsistent~~**considered to be consistent** with the fair allocation calculation applicable at the time when the payment is due; and

(b) ~~whether the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(~~4~~5) An unpaid **amount in respect of a** clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the **specified** consumer to each investment ~~asset~~**interest** owner in respect of each **investment interest** owner's respective interest in the investment asset.

Same

(~~5~~6) The indebtedness mentioned in subsection (~~4~~5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

~~***<Irrevocability of clean energy adjustment>***~~

~~**9xx.** (1) The amount*<of the clean energy adjustment shown on>* an invoice issued to a specified consumer *<under this Act is determinative of the amount of>* the consumer's *<indebtedness created by>* the adjustment and*< is irrevocable upon invoicing the consumer and may not be set off or by passed.>*~~

~~***<Exception>***~~

~~*< (2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor>*.~~

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

   i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

   ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.] [NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment ~~asset~~**interest** owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those ~~accounts~~**amounts**:

1. Amounts described in subsection ~~12~~**11xx** (~~4~~**2**).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (~~6~~**5**), be held**, and are deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~**interest** owners in accordance with the regulations.

Collection of outstanding amounts~~, regulatory asset~~

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect ~~the difference~~**any outstanding IESO funding shortfall** from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

~~**Electricity vendor to invoice specified consumers**~~

>*Irrevocability of clean energy adjustment*<

12xx. (1) The ~~electricity vendor shall issue~~**amount in respect**> *of the clean energy adjustment shown on*< an invoice **issued** to ~~each~~**a** specified consumer ~~for~~>*under this Act is determinative of the amount of*< the consumer's ~~amount of~~>*indebtedness created by*< the clean energy adjustment> *is irrevocable upon invoicing the consumer and may not be set off or by passed.*<

>*Exception*<

> *(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor*<**, which error shall be corrected** in accordance with ~~the regulations~~**section 10xx(2)**.

~~**<*Electricity vendor to collect*>**~~

~~< *(2) Each electricity vendor shall, as an agent of the IESO and the investment* >asset owners, collect< *the clean energy adjustment from specified consumers [in accordance*~~

~~*with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].*~~ ~~>~~

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment ~~asset~~**interest** owner in accordance with subsection (5), be held**, and shall be deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~5~~**4**) to the IESO for the benefit of the investment ~~asset~~**interest** owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager **for purposes of section 16xx of the Act** if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager **for purposes of section 16xx of the Act**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~asset owner~~**interest owners**.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to **the IESO for distribution to** electricity vendors~~, including the IESO~~, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

~~Financial Services Manager~~Minister to calculate fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the ~~Financial Services Manager~~**Minister** shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The ~~time value of money or the rate of inflation~~**funding costs associated with the funding obligations**, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected **volumes of** electricity consumption ~~rates~~ for each reference period.

Allocation of fair adjustment

(3) If, before the ~~Financial Services Manager~~**Minister** has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The ~~Financial Services Manager~~**Minister** may amend the fair allocation calculation from time to time, as the ~~Financial Services Manager~~**Minister** considers appropriate, having regard to the requirements of this Act.

~~**Submission of fair allocation to Minister**~~

~~(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.~~

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the ~~Minister in writing.~~**Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. [NTD: There should be a tie in to section 7xx.]**

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period~~. **[NTD: See note after 15xx(1.1)(2)]**.

2. Incurrences and transfers should be implemented in a manner that~~, as~~ the Financial Services Manager ~~considers to be reasonable, is cost effective and~~**determines reasonably** reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations ~~incurred~~**that** would ~~not~~ be payable during the reference period ~~in an amount that exceeds~~**would not exceed** the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(~~4~~**5**) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*] **[NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

~~**<*Implementation of Financing Plan*>**~~

~~**17xx.** (1) The Financial Services Manager shall< *incur funding obligations and make transfers in material conformity with the applicable*> Financing Plan.~~

~~**Same**~~

~~(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).~~

Financing entities

17xx. (~~3~~**1**) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

>Implementation of Financing Plan<

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to> *incur funding obligations and make transfers in material conformity with the applicable*< **Financing Plan.**

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(~~3~~**4**) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity),** the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to ~~Fair Allocation~~Financing Plan

(~~4~~**5**) ~~No~~**Each** funding obligation incurred and ~~no~~**each** transfer made by ~~the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X~~**a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount**.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize the IESO to do the following~~**authorizing the IESO to [NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. ~~Create~~**establish** a variance account for the purposes of this Act~~.~~**;**

2. ~~Record~~**record** the IESO funding shortfall in the variance account from time to time~~.~~ **[NTD: monthly?]; and**

3. ~~Recover~~**recover** the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The **accounting** order of the Board **made under (1)** shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the **accounting** order of the Board **made under (1)**.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts **that would be** issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other ~~restrictions~~**conditions** as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan~~, which transfer creates the investment asset~~.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in~~, or any~~ **the regulatory asset or in the related investment asset. [NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of~~, the regulatory asset or in~~ the investment asset will be primarily created by ~~the transfer~~ contract.]**

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner and~~ acquires an investment interest **and becomes an investment interest owner**.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~**interest** owner of the regulatory asset,

and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~**of investment interest owners**:

1. The right to impose, bill, invoice, collect ~~and~~, receive **and recover** the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive ~~and~~, collect **and recover** all amounts in respect of the clean energy adjustment that are imposed, billed ~~and~~, invoiced **and recoverable** under this Act, including any ~~amounts that~~**and** all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset~~**investment interest** owner's ~~regulatory asset~~**investment interest**.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(~~2~~**3**) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~**interest** owner or an owner of distribution system assets in the Province;

(b) in connection with any default~~, bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(~~3~~4) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security Act*~~ **Part III of this Act. [NTD: PPSA has nothing to do with it.]**

Collective action required

(~~4~~5) If the investment ~~asset~~**interest** owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset~~**interest** owner collectively and in coordination with all other investment ~~asset~~**interest** owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~**interest** owner as a collective in accordance with its terms.

[Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment ~~asset~~**interest** owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~**interest** owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~**interest** owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~**interest** owner shall have priority over any liens in favour of such other persons**, other than those granted in accordance with section 28xx of the Act**.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~**interest** owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under ~~the~~**an** investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment ~~asset~~**interest** owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other~~ account of any electricity vendor~~, the IESO~~, an agent of an electricity vendor~~ or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~**interest** owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~**interest** owner or secured party by any person or entity authorized to collect the clean energy adjustment, **including** defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment of the Fair Allocation Plan~~**calculation of the fair allocation amount or the fair adjustment**.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28~~7~~[76]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

~~7~~[76] Note - see s. 51 of the Electricity Act, 1998

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

~~38~~**39xx.** The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~**c**) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~.~~**;**

(~~b~~**d**) governing the inclusion of ~~adjustments~~**information** under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in

activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, ~~2017, which activities may include,~~ **2017;***

(iv) incurring liabilities in relation to the regulatory asset**;**

(v) transferring the regulatory asset for consideration; **and**

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~ **2017.***

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that~~>*the Ontario Fair Hydro Plan*< *Act*>, *2017*< and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan*~~**that** Act, ~~*2017,*~~ including ~~the following:~~ ~~1.~~ ~~Entering~~**entering** into contracts and undertakings on behalf of <~~*special purpose*~~>financing entities~~, including pre-formation contracts and undertakings and as principal in relation to matters permitted by <*the Ontario Fair Hydro Plan*> *Act*<, *2017*>~~ **and performing other services on behalf of financing entities,** subject to the right ~~of reimbursement from amounts available~~ to **be paid by** the financing ~~entity.~~**entities for those services.**[7]

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

[7] **NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.**

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.~~

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create **or invest in** one or more subsidiaries, trusts**, partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new Act.]~~***Ontario Fair Hydro Plan Act, 2017.***

205x. ~~Section 70 of the Act would be amended by adding the following subsection~~Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any >*special purpose* <**financing entities established under and for the purposes of that Act.**

~~*[Note - still need to draft new subs. 70 (2.1)]*~~

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined **by the Financial Services Manager** by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment ~~asset~~**interest** owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the **investment asset** owners under a funding obligation, ~~excluding any payment made by applying the~~**reduced by any** proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, **original issue discount** scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received **or expected to be received** by or on behalf of investment ~~asset~~**interest** owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ~~2~~**ii** from the amount calculated under paragraph ~~1.~~**i.**

3. The sum of all amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve ~~at the end of~~**for** the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners that were incurred or committed to

directly or indirectly in connection with the **acquisition, maintenance or collection of the investment asset or the** incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve ~~at the end of~~**for** the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment ~~asset~~**interest** owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment ~~asset~~**interest** owners during the reference period ~~from deposits previously made as described in paragraph 1.~~.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Document comparison by Workshare Compare on April-23-17 11:09:30 AM

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Split/Merged cell	
Padding cell	

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Style change	0
Format changed	0
Total changes	566

Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.pdf

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held, and are deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held, and shall be deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
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Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their co

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From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
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Attachment 1: SETOR1-#6712816-v4-Fair_Hydro_Act.docx
Attachment 2: WSComparison__6712834_1-_6712816_4.pdf

Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their comments especially around the requirements to be met in order to recognize and de-recognize the regulatory asset.

While not reflected in our mark-up, we think that Part III with respect to the billing and collection of the Clean Energy Adjustment would benefit from a reorganization. First, it might be moved later in the statute, after both Part V with respect to the Regulatory Asset and Part VI with respect to the Investment Asset. Its current placement suggests that it is relevant to both the regulatory asset and the investment asset , which is not the case. Second it might be internally reorganized so that it deals sequentially with the following subjects:

1. Determination of the amount of the Clean Energy Adjustment, which in our view should be done by the Financial Services Manager (currently in Sections 10(1) and 10(3).

2. Determination by the OEB of the rate necessary to recover the Clean Energy Adjustment (currently in Section 10(2)). It is not clear to us that there is a role for the IESO in between the OEB and the electricity vendors, but happy to discuss.

3. Obligation of electricity vendors to invoice (Section 12)

4. Obligation of consumers to pay invoice amount (Section 8)

5. Obligation of electricity vendors to collect and remit (Section 12(2) to 12(6)). We need to provide for the collection standard and in particular make clear that they do not guarantee collection from customers.

6. Obligation of IESO to collect and remit (Sections 11(2) to 11(5). We need to provide for the collection standard and in particular make clear that we do not guarantee performance by the electricity vendors.

Peter

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Thursday, April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our

thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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SETOR1-#6712816-v4-Fair_Hydro_Act.pdf

Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

---

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid by the IESO referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]**

a. procurement contracts for:

a. renewable energy generation or capacity,

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b. conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. energy efficiency,

d. natural gas generation and capacity, excluding such contracts as may be prescribed, or [**NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")
[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

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"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment**

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Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment; or **[NTD: the clean energy adjustment is allocated and collected rateably]**

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

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"average baseline invoice amount" means the monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), to more fairly recognize clean energy benefits and allocate the clean energy costs among present and future generations of specified consumers, the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with the terms of payment specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

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(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. The Financial Services Manager shall estimate the finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method. **[NTD: the true up amount may be either positive or negative.]**

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3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs,

   ii. aggregate variations in billings due to variations in electricity consumption, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to receive

(2) The IESO shall, as an agent of the investment asset owners, receive the clean energy adjustment paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of

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the *Electricity Act, 1998]*. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.] [NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].**

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners. **[NTD: see sections with security interest language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer in respect of the clean energy adjustment, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(3)Each electricity vendor shall, as an agent of the investment asset owners, collect the clean energy adjustment paid by specified consumers [in accordance with the regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred .

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

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[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account
20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same
(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record in the variance account an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same
(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

Same
(4) IESO shall record in the variance account all payments received by the IESO resulting from the right of recovery under section 21 or any transfer under section 22.

Recording determinative
(5) Each recording by the IESO in the variance account is determinative as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner
(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established
21xx. (1) IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance accounts.

Same

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

(3) IESO shall not be entitled to collect all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity. **[NTD: not necessary and unhelpful to refer to the Financing Plan in relation to transfers]**.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

Vesting, deemed Perfection

(3) Each transfer of a regulatory asset shall be deemed to have been and shall be perfected and vested as against IESO and all other persons who have claims of any kind against IESO or the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer or have registered or otherwise perfected their interest.

PART VI
THE INVESTMENT ASSET

Investment asset

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest**.**

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(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

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[NTD: the earlier provisions provided that the PPSA does apply]

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

[7] Note - see s. 51 of the Electricity Act, 1998

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(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. incurring liabilities in relation to the regulatory asset

b. transferring the regulatory asset for consideration;

c. acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

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Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
FINANCE AMOUNT

Finance amount

1. The finance amount for a reference period shall be the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities ~~in the Province~~ for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

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The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid by the IESO ~~under~~referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for,~~ **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs**

under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]

a. procurement contracts for:

a. ~~(i)~~ renewable energy generation or capacity,

b. ~~(ii)~~ conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. ~~(iii)~~ energy efficiency,

d. ~~(iv)~~ natural gas generation and capacity, excluding ~~contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other~~such contracts as may be prescribed, or **[NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. ~~(v)~~ payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means ~~the IESO,~~ a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the ~~determination of the~~ rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, ~~which entitles~~and, in the case of a transfer of an interest in an investment asset ~~owner to~~ , the rights and benefits specified in the agreement under which the ~~ownership~~interest in the investment interest is transferred;

---

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the ~~IESO funding shortfall~~amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means ~~an~~(i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale~~; ("French")~~ thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]**

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

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i. a dwelling,

ii. a property within the meaning of the *Condominium Act, 1998*,

iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

   v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in~~

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~~the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of~~; or **[NTD: the clean energy adjustment** ~~over other debts; or~~**is allocated and collected rateably]**

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[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), ~~[~~to more fairly ~~measure~~recognize clean energy benefits and allocate the clean energy costs ~~and clean energy benefits~~ among present and future

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generations of specified consumers,~~]~~ the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with ~~such~~the terms of payment ~~as may be~~ specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any

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other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. ~~Calculate~~The Financial Services Manager shall estimate the ~~estimated~~ finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. ~~Add~~ The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method~~, to~~. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount ~~calculated under paragraph 1.~~and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(~~2~~3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account ~~historical and reasonably foreseeable~~,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, ~~and~~

   ii. aggregate variations in billings due to variations in electricity consumption~~.~~, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to ~~issue remittance notice to electricity vendors~~receive

~~11xx.~~ ~~(1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~IESO to collect~~

(2) The IESO shall, as an agent of the investment asset owners, ~~collect~~ receive the clean energy adjustment ~~from~~paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.]**

[NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].

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Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of ~~collecting~~receiving those ~~accounts~~amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners ~~or a secured party to whom a~~**. [NTD: see sections with security interest** ~~in an investment interest is granted under this Act.~~**language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer~~'s amount~~ in respect of the clean energy adjustment ~~in accordance with the regulations~~, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(~~2~~3) Each electricity vendor shall, as an agent of ~~the IESO and~~ the investment asset owners, collect the clean energy adjustment ~~from~~paid by specified consumers [in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~ regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners ~~or secured parties~~ in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made for the purposes of this Act~~.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences ~~and transfers~~ should be implemented in a manner that~~, as~~ the Financial Services Manager considers to be reasonable, ~~is~~to be cost effective and ~~reflects~~to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If ~~a~~any transfer ~~under this Part~~ provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3.Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month ~~in the following manner~~shall be equal to A – B + C where:

1. ~~Calculate~~ A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. ~~Calculate~~ B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

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~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account

20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers~~,~~ or an error in the information provided by an electricity vendor, the IESO shall record ~~an adjustment~~ in the variance account ~~in the following month~~an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same

(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

~~**Recording of IESO funding shortfall**~~

Same

(~~3~~4) IESO shall record in the variance account all payments received by the IESO ~~funding shortfall from time to time, including adjustments~~ resulting from ~~the exercise of~~

the right of recovery under section 21 ~~and~~or any transfer under section ~~22, in the variance account.~~22.

Recording determinative

(~~4~~5) ~~A~~Each recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account is determinative ~~of the amount of IESO funding shortfall~~as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner

(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) ~~The~~ IESO has the right, exercisable in accordance with this Act and the regulations, to recover ~~the IESO funding shortfall~~from specified consumers the balance from time to time recorded in the variance accounts.

Same~~, restrictions~~

(2) The ~~IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:~~Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

~~1. The~~ (3) IESO shall not be entitled to collect ~~the IESO funding shortfall~~all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity ~~under~~. **[NTD: not necessary and unhelpful to refer to the Financing Plan~~, which transfer creates the investment asset~~ in relation to transfers]**.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~, (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account;~~ of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and ~~(b) unless otherwise provided for in this Act, the IESO~~ shall have no ~~further~~ right, title or interest in~~, or any obligations in respect of, the regulatory asset or in the~~ any investment asset ~~created by the transfer.~~arising under this Act.

~~**Same**~~

Vesting, deemed Perfection

(3) Each ~~Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.~~ **~~Validity~~**transfer of ~~**transfer**~~

~~**23xx.** (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.~~

~~**Same**~~

~~(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.~~

~~**Deemed perfection, etc.**~~ ~~(3) At the time a transfer of a regulatory asset is made, the transfer~~a regulatory asset shall be deemed to have been and shall be perfected~~,~~ and vested~~, valid and binding~~ as against ~~the transferor~~IESO and all other persons who have claims of any kind against IESO or the ~~transferor~~regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer ~~and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons~~or have registered or otherwise perfected their interest.

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PART VI
THE INVESTMENT ASSET

~~Interpretation, investment~~Investment asset

~~**24xx.**~~

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest.

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

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6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including, (a)~~ by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province~~;~~

~~(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or (c)~~ or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.
[Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the

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investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to

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the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

~~**Conflict**~~

~~**33xx.** The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.~~ **[NTD: the earlier provisions provided that the PPSA does apply]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding ~~for damages~~ shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

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undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, ~~2017,~~2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] Note - see s. 51 of the Electricity Act, 1998

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. ~~(iv)~~ incurring liabilities in relation to the regulatory asset;

b. ~~(v)~~ transferring the regulatory asset for consideration;

c. ~~(vi)~~ acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

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6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

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[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated finance~~Finance amount

1. The ~~estimated~~ finance amount for a reference period shall be ~~determined by estimating, prior to the start of a reference period,~~ the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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	Count
Insertions	157
Deletions	162
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	327

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From: Alan Hibben [alan.hibben@rogers.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; "MCAULEY Tyler -LAWDIV" [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Nevison, Gary' [Gary.Nevison@tdsecurities.com]; 'Thom, Trevor' [Trevor.Thom@tdsecurities.com]; 'Akman, Steven' [Steven.Akman@tdsecurities.com]; 'Thompson, Susan' [Susan.Thompson@tdsecurities.com]; 'Manii, David' [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 11:33:55

I have a couple of comments. I apologize in advance that I have not been able to keep up with al the drafting and other decisions, so to the extent that these elements have already been agreed by OPG, I apologize.

1. "Clarification with respect to regulations" should refer to "any proposal to make ***or amend*** a regulation"

2. "Average baseline rate" is this calculated **before** the announced HST rebate?

3. "Fair Adjustment May 1, 2018 to April 30, 2022" – would like to make sure that the regulations allow for a pass-through of interest on investment assets in this time period.

4. "Principles of fair adjustment" why does this refer to the time value of money rather than funding costs of the investment assets?

5. "Fair Allocation Plan" this is still in the document, but now without any use or definition . Is this a holdover? Would be good to get rid of the concept completely

6. "Estimated funding amount" should include original issue discount (if any)

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]

Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April

28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com);

Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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RE_ Ontario Fair Hydro Plan.rtf

From: Alan Hibben [alan.hibben@rogers.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; "MCAULEY Tyler -LAWDIV" [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Nevison, Gary' [Gary.Nevison@tdsecurities.com]; 'Thom, Trevor' [Trevor.Thom@tdsecurities.com]; 'Akman, Steven' [Steven.Akman@tdsecurities.com]; 'Thompson, Susan' [Susan.Thompson@tdsecurities.com]; 'Manii, David' [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 11:33:55

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I have a couple of comments. I apologize in advance that I have not been able to keep up with al the drafting and other decisions, so to the extent that these elements have already been agreed by OPG,

RE_ Ontario Fair Hydro Plan.rtf

From: Sebastiano, Rocco [RSebastiano@osler.com]
To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 14:39:45
Attachment 1: image001.jpg

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com;

Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then

regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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To: Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 14:39:45
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Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an

asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to ad

Attachments:

Fair Hydro Plan Act (April 26 2017) Consultation v4.docx (140 KB)

https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855680~201704261638530000~Z~D13697260CB9F11C5FA34B049DBB2491&AttachmentId=1Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

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All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Confidential Draft

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:00:19
Attachment 1: Fair Hydro Act (April 17 2017) Consultationv5.docx

---

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Act (April 17 2017) Consultationv5.pdf

Version 2

This document is a draft intended for discussion purposes only. It may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended to assist the review of this discussion document only.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

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

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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8.3 Ontario Power Generation Inc. appointed as Financial Services Manager
11.

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

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"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature

[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

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

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

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(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

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IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of the clean energy adjustment to or for the benefit of the investment asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO may collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

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Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

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PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. (“French”)

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Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

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Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

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(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy adjustment for the reference period.

[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

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No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

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3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset
Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[Note: Consider location of this section with other roles of FSM above.]

Same

(1.1) The administration of an investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer

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upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and

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shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

5. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

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202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or

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establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Saulnier, Brett [bsaulnier@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 17:58:21
Attachment 1: @

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All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importan

Attachments:

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
Attachment 1: image9b9365.JPG
Attachment 2: New Sections.DOCX

All,

In case it is helpful for this afternoon's meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a

view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset

(although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the

investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>;

maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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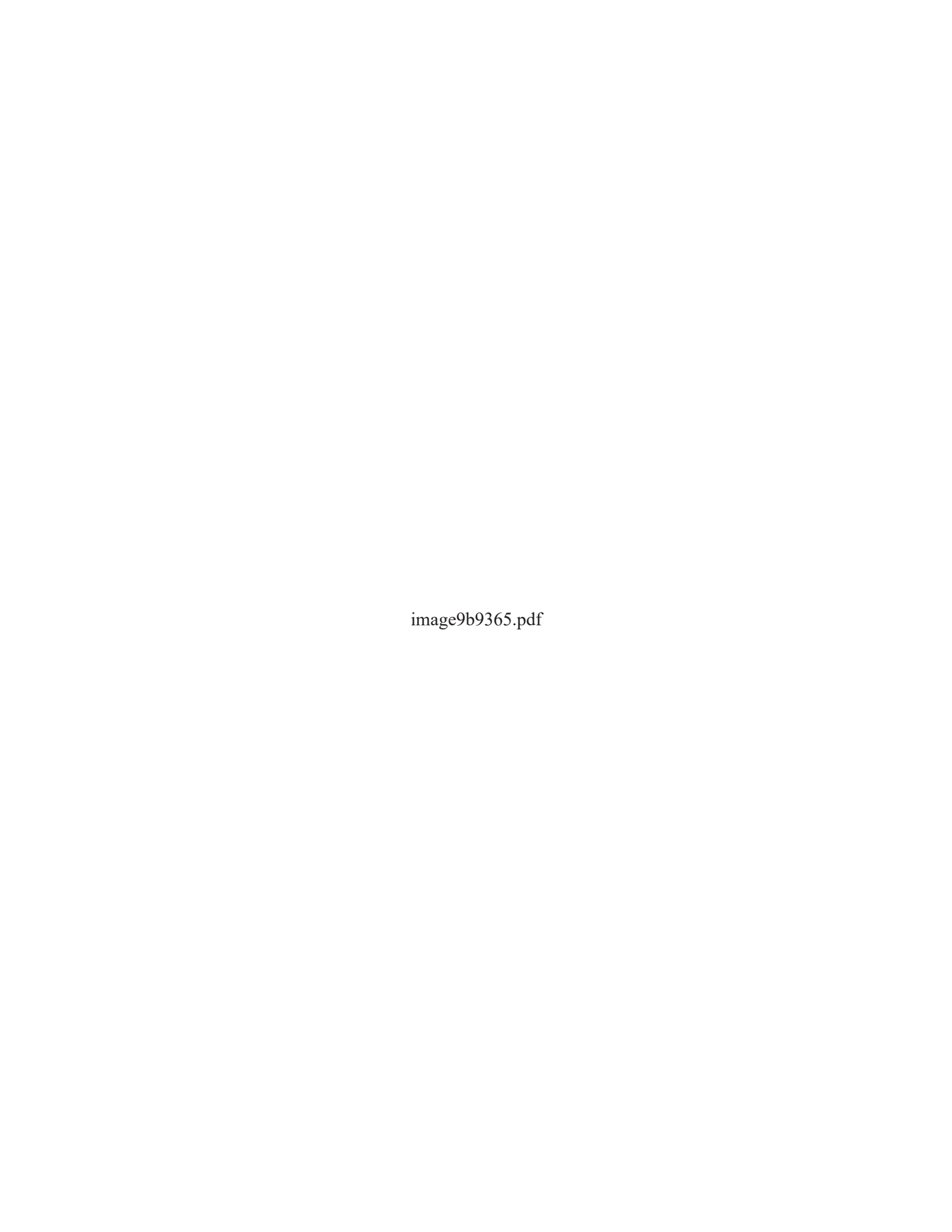
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New Sections.pdf

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, "payment obligations as may be prescribed").

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the

FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all "green energy".

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a "collective rights agreement" affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

"Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Calwell, Carolyn (ENERGY) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:00:19
Attachment 1: Fair Hydro Act (April 17 2017) Consultationv5.docx

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Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Act (April 17 2017) Consultationv5.pdf

Version 2

This document is a draft intended for discussion purposes only. It may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended to assist the review of this discussion document only.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

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

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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8.3 Ontario Power Generation Inc. appointed as Financial Services Manager
11.

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

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"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature

[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

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

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

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(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

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IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of the clean energy adjustment to or for the benefit of the investment asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO may collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

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Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

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PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. (“French”)

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Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

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Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

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(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy adjustment for the reference period.

[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

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No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

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3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset
Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[Note: Consider location of this section with other roles of FSM above.]

Same

(1.1) The administration of an investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer

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upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and

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shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

5. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

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202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or

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establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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From: Smith, Elliot [ESmith@osler.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
Attachment 1: image002.gif
Attachment 2: image003.gif
Attachment 3: image004.jpg
Attachment 4: image005.jpg
Attachment 5: Compare - Fair Hydro Act - Osler comments.pdf
Attachment 6: Fair Hydro Act (April 23 2017) [Osler comments].docx

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Please find enclosed Osler's comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>;

Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton'

<PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital

Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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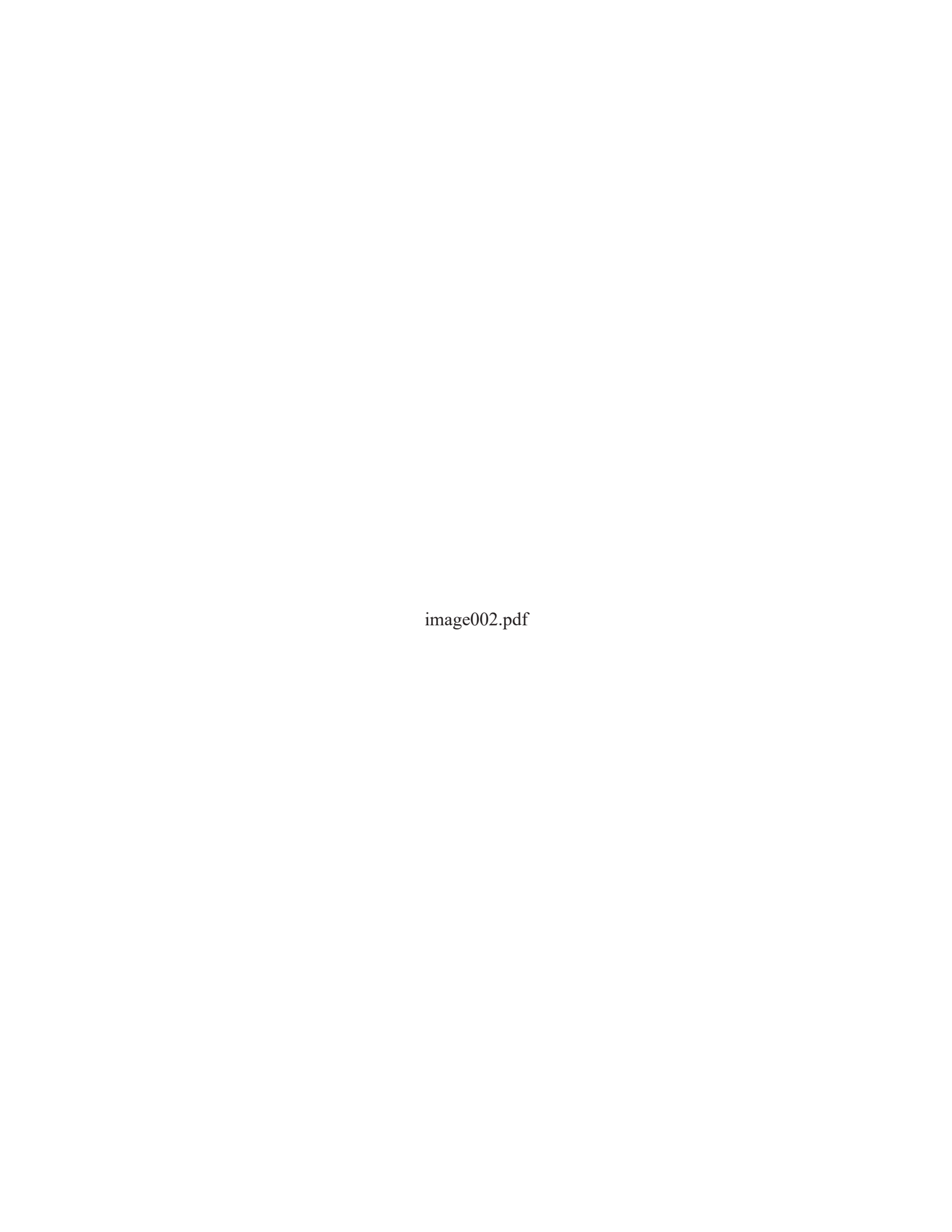
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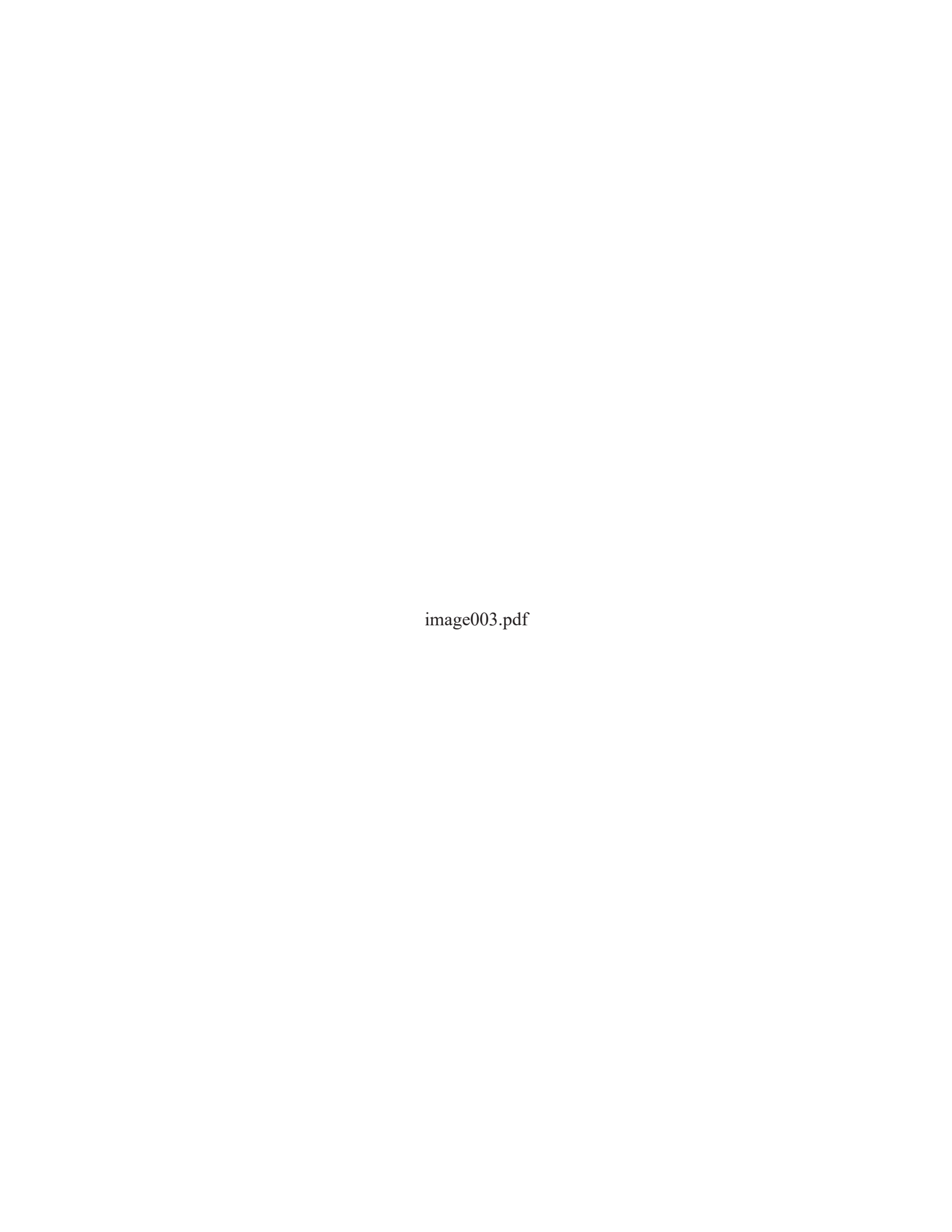
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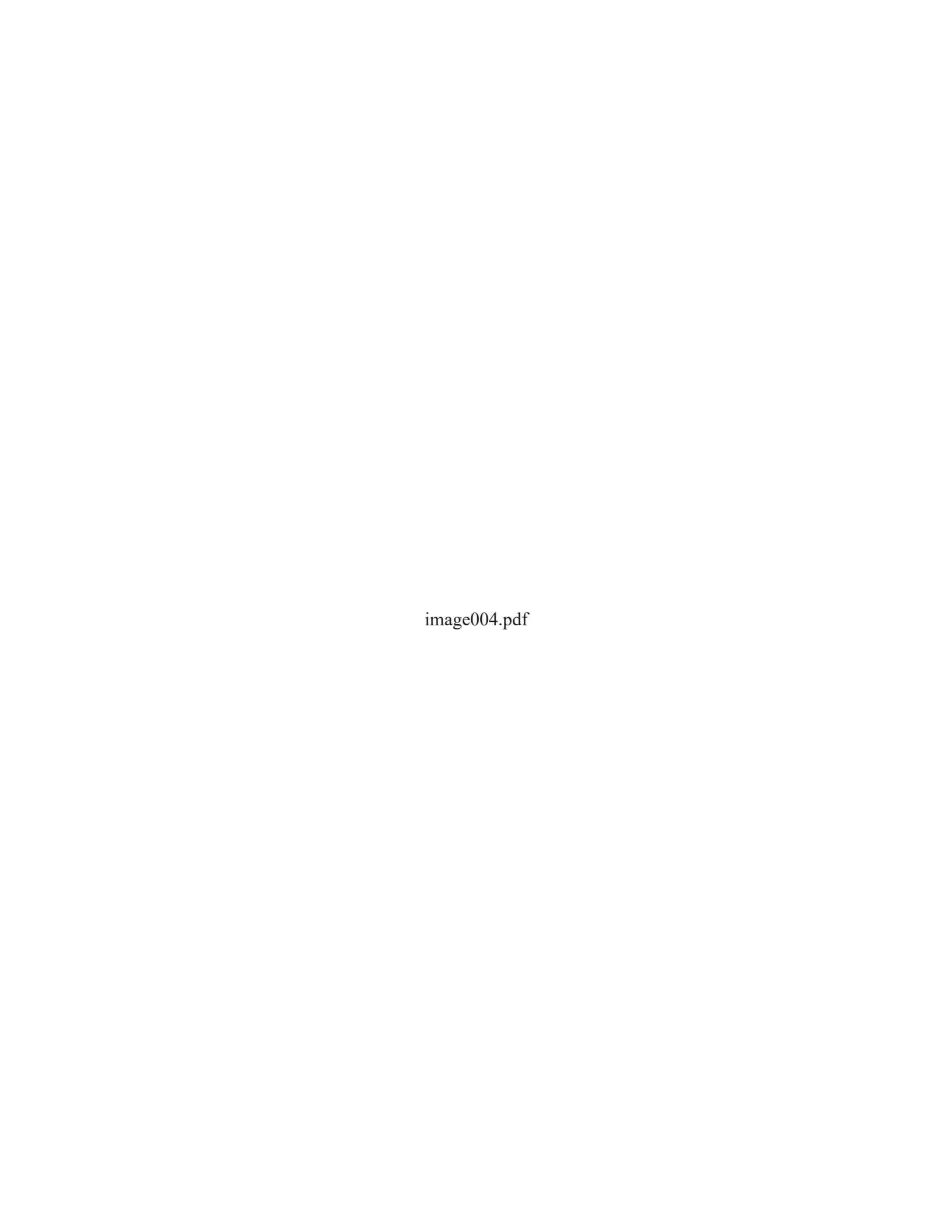
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~~**Version 3**~~
April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative[**, including as a result of past, present and expected future incurrences of clean energy costs**][**[NTD: What does this mean?]**]; ("French")

"clean energy costs" means, in respect of a reference period, the ~~value~~amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x; ("French"). **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a ~~reference period~~calendar month, the amount determined under section 20xx for the ~~reference period~~calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be ~~set out in the Fair Allocation Plan~~prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a ~~named~~specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the ~~p~~provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation~~; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment ~~over other debts; or~~in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements ~~for compensation~~

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is ~~25~~**[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

~~(2) Subsection (1) does not apply to the extent that there is a calculation error~~**[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the ~~electricity vendor.~~OEB.]**

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the ~~estimated~~actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors ~~[~~in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, ~~1998]~~1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those a~~cc~~mounts:

1. Amounts described in subsection 12 (~~4~~5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~.~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer ~~for the consumer's amount~~ of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers ~~[in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]~~.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~:~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the ~~electricity vendor~~IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the ~~expected~~estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the ~~expected~~estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would ~~become payable during the reference period and~~ result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(~~4~~5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) ~~The Financial Services Manager shall incur funding~~Funding obligations shall be incurred and ~~make~~ transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section ~~[paramountcy of funding obligations]~~17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(~~3~~4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

~~Effect of amendment to Fair Allocation Plan~~Financing Plan compliance

(~~4~~5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize~~authorizing the IESO to~~ do the following~~:

1. ~~Create~~Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation]. **[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in, or any obligations in respect of~~, the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred ~~to~~ a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer ~~of IESO's right to recover the IESO funding shortfall~~, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any ~~amounts that~~and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or ~~an owner of distribution system assets in the Province~~licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way

of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]. [NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds ~~that are deposited in~~collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person ~~who~~, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to**

be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan ~~or in relation to the establishment of the Fair Allocation Plan~~.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

~~**References in marketing materials and offering documents**~~

~~**36xx.** No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.~~

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(~~b~~d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[7] Note - see s. 51 of the Electricity Act, 1998

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to

facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a

subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Fair Hydro Act (April 23 2017) [Osler comments].pdf

April 23, 2017 Osler Mark-up of Ver. 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative**[, including as a result of past, present and expected future incurrences of clean energy costs][NTD: What does this mean?]**; ("French")

"clean energy costs" means, in respect of a reference period, the amount of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x; ("French") **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a calendar month, the amount determined under section 20xx for the calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect or invalidate a funding obligation, or any rights or obligations associated with such funding obligations, that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is **[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the OEB.]

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the actual finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 12 (5).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: This is unclear.]**

Confidentiality of plan

(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) Funding obligations shall be incurred and transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section 17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (4).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Financing Plan compliance

(5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to:

1. Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation].**[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) the IESO shall have no further right, title or interest in, or any obligations in respect of the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred to a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the cumulative IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons or any other persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and

under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]**. **[NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]**

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged

neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act…

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

[7] Note - see s. 51 of the Electricity Act, 1998

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Smith, Elliot [ESmith@osler.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
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Please find enclosed Osler’s comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of

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Fair Hydro Act (April 23 2017) [Osler comments].docx (145 KB)
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RE_ Ontario Fair Hydro Plan.rtf

From: Alan Hibben [alan.hibben@rogers.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; "MCAULEY Tyler -LAWDIV" [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Nevison, Gary' [Gary.Nevison@tdsecurities.com]; 'Thom, Trevor' [Trevor.Thom@tdsecurities.com]; 'Akman, Steven' [Steven.Akman@tdsecurities.com]; 'Thompson, Susan' [Susan.Thompson@tdsecurities.com]; 'Manii, David' [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 11:33:55

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I have a couple of comments. I apologize in advance that I have not been able to keep up with al the drafting and other decisions, so to the extent that these elements have already been agreed by OPG,

RE_ Ontario Fair Hydro Plan.rtf

From: Hill, Krista [khill@torys.com]
To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 24, 2017 20:04:31
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All,

We discussed Oslers’ two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you’d like to discuss th

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RE_ Ontario Fair Hydro Plan.rtf

From: Hill, Krista [khill@torys.com]
To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 24, 2017 20:04:31
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: image004.jpg
Attachment 5: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....docx

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All,

We discussed Oslers' two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you'd like to discuss the changes. Regards, Krista

P. 416.865.7953 | F. 416.865.7380 | 1.800.505.8679

From: Smith, Elliot [mailto:ESmith@osler.com]

Sent: April-23-17 5:53 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please find enclosed Osler’s comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>

Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian,

Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary

(Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes

summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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416-212-8392

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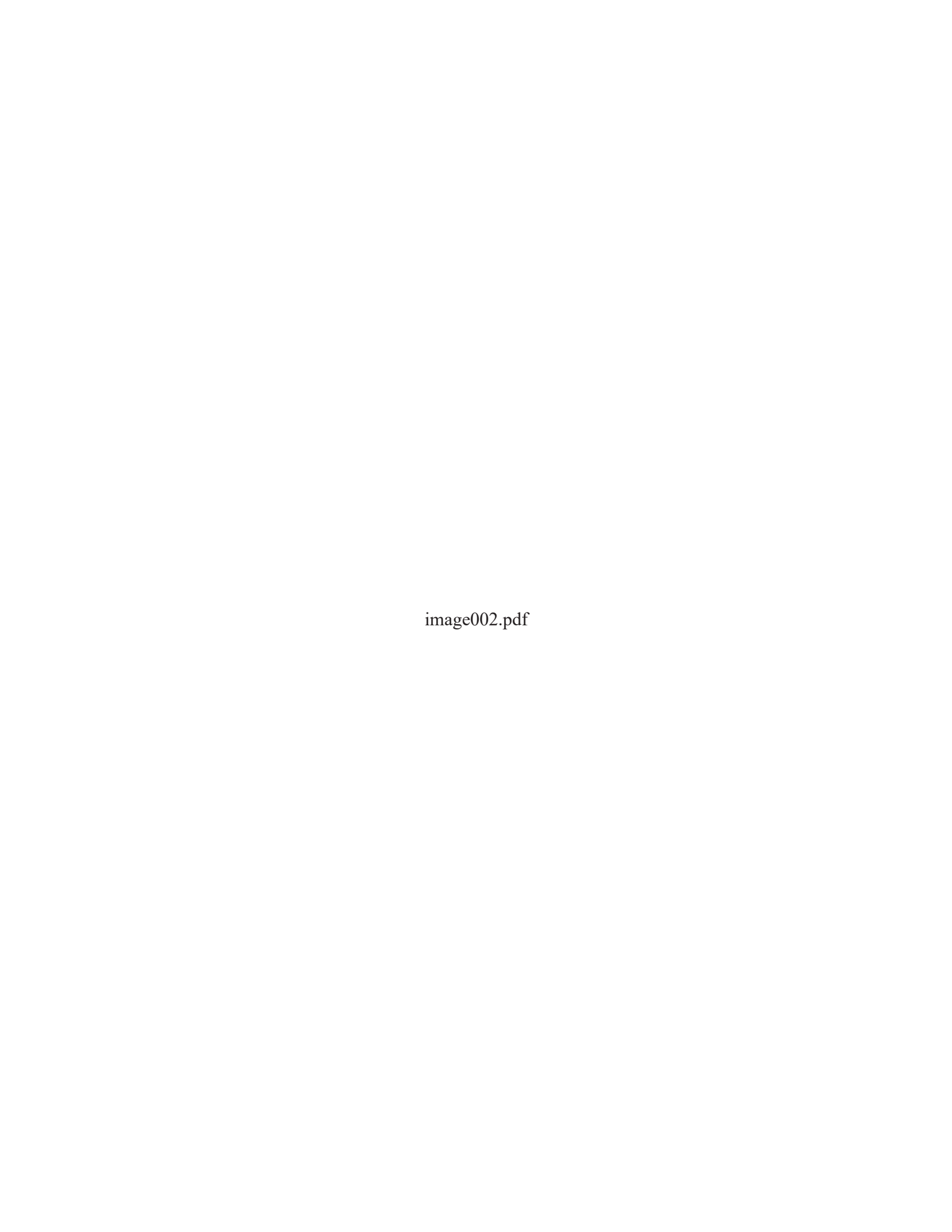
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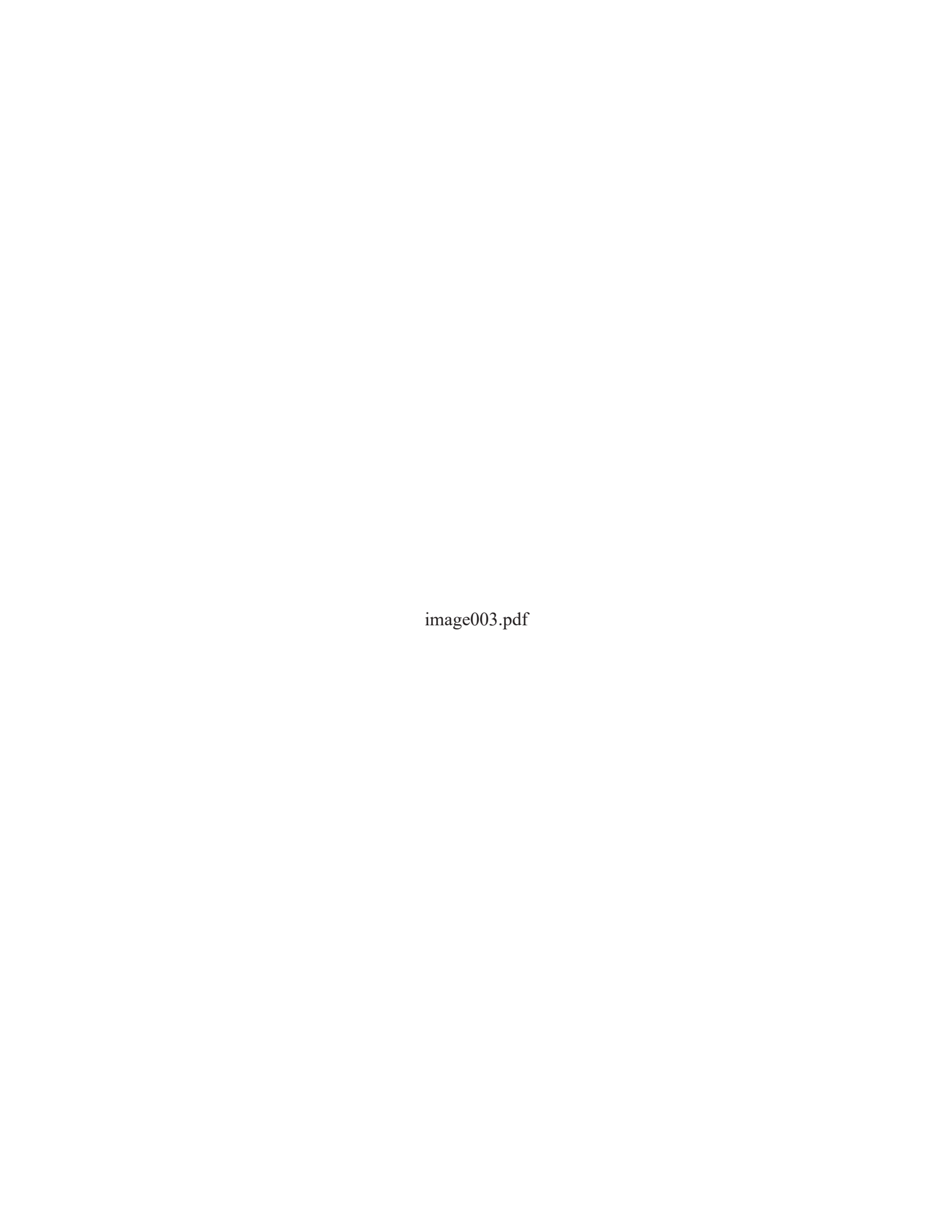
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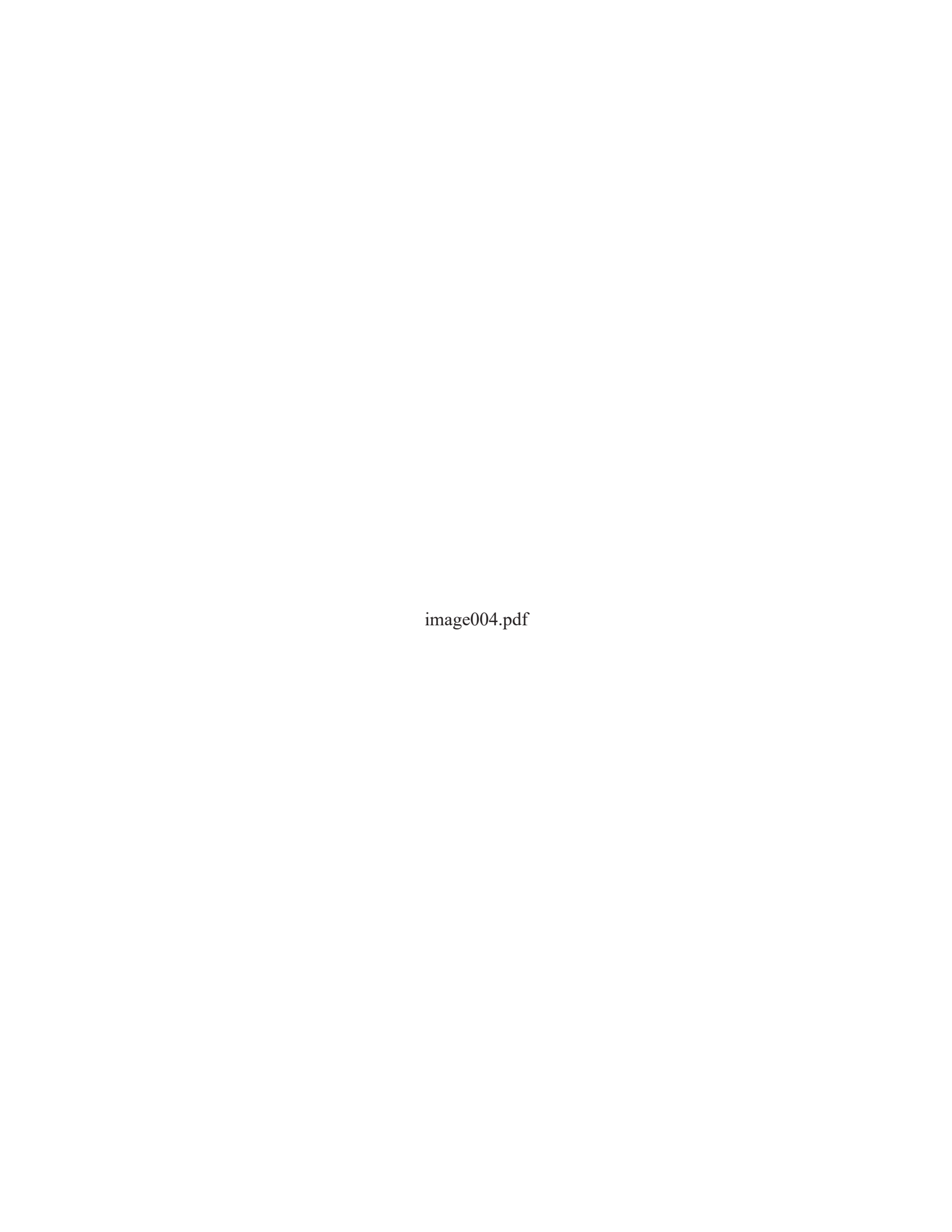
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Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....pdf

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Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held~~, and are deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held~~, and shall be deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) ~~Subject to subsection (1.4) and d~~Despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise.

~~**Exception**~~

~~(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.~~

Definition, financing entity

(1.~~5~~4) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.***]

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an

asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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From: Hill, Krista [khill@torys.com]
To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
Subject: RE: Ontario Fair Hydro Plan
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All,

We discussed Oslers’ two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you’d like to discuss th

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From: Hill, Krista [khill@torys.com]
To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
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Date: Monday, April 24, 2017 20:04:31
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Attachment 4: image004.jpg
Attachment 5: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....docx

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All,

We discussed Oslers' two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you'd like to discuss the changes. Regards, Krista

P. 416.865.7953 | F. 416.865.7380 | 1.800.505.8679

From: Smith, Elliot [mailto:ESmith@osler.com]

Sent: April-23-17 5:53 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please find enclosed Osler’s comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>

Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian,

Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary

(Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes

summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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416-212-8392

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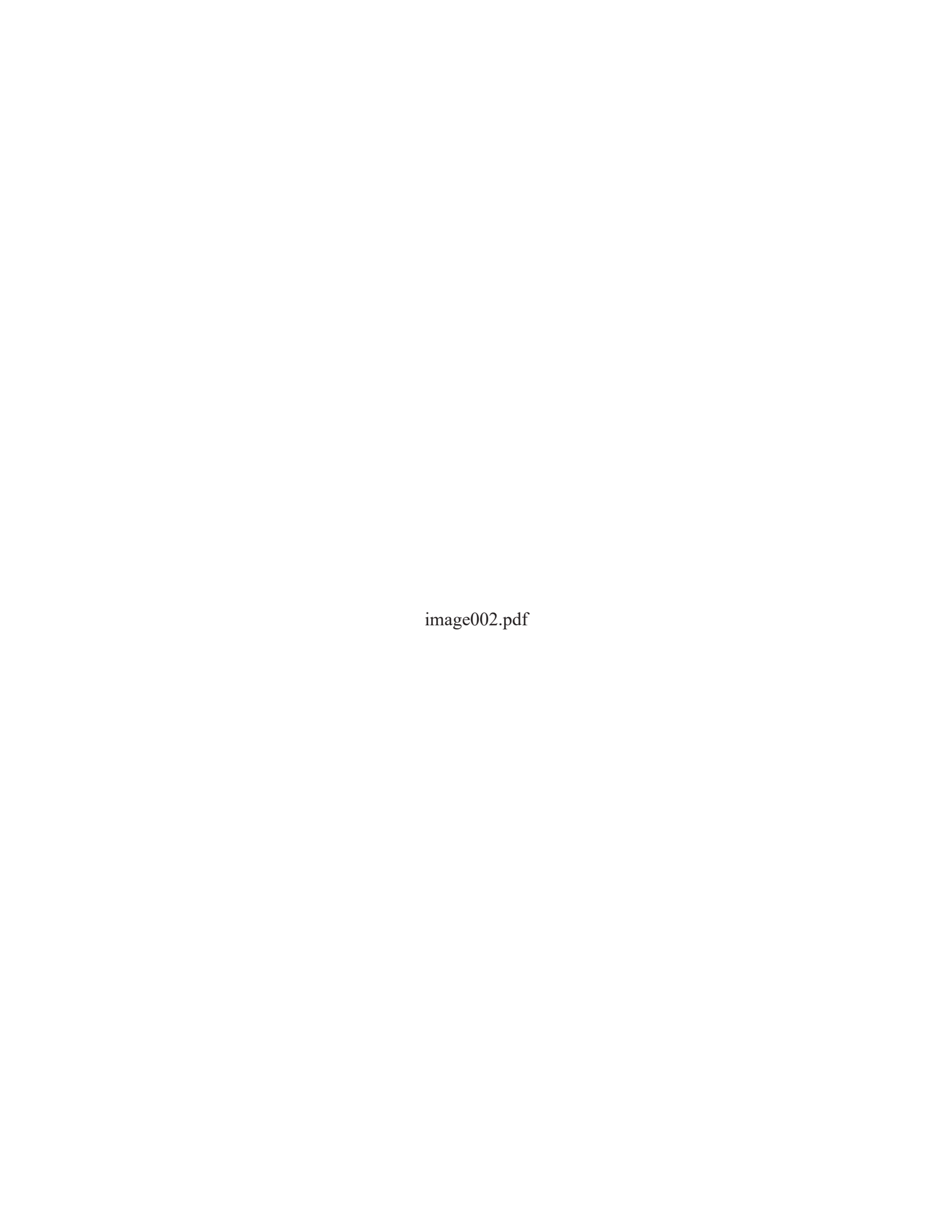
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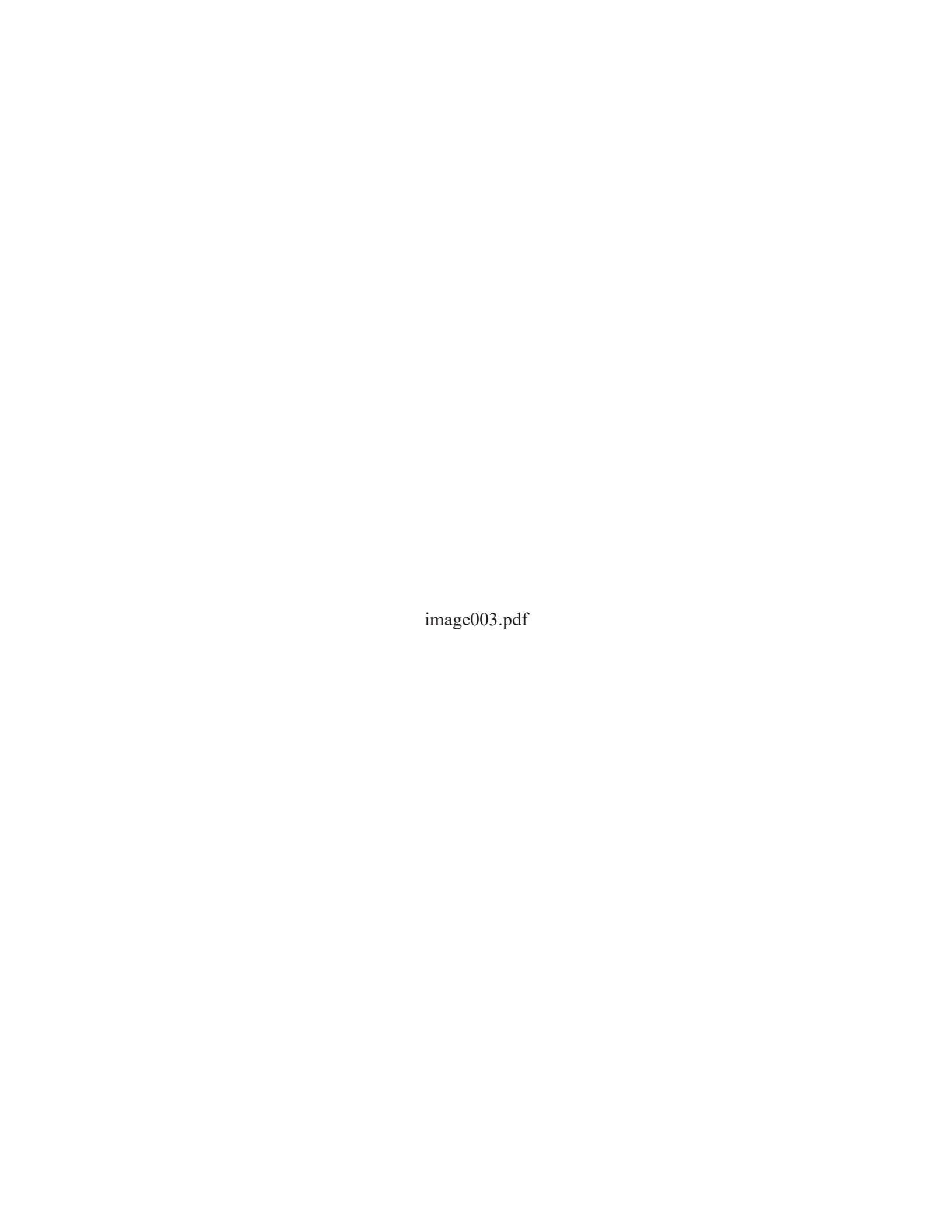
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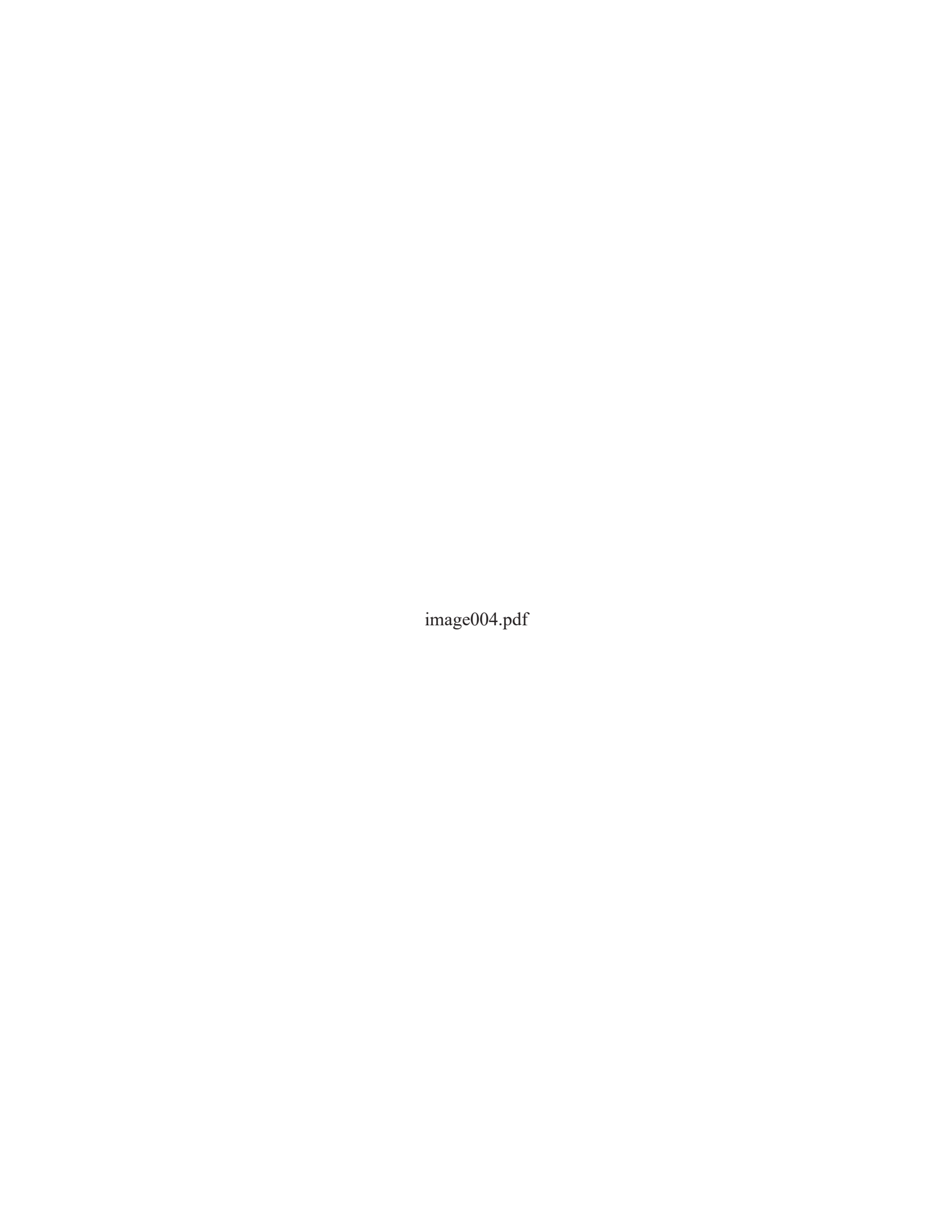
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Version 3

Torys/OPG Comments – April 23, 2017

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held~~, and are deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held~~, and shall be deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) ~~Subject to subsection (1.4) and d~~Despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise.

~~**Exception**~~

~~(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.~~

Definition, financing entity

(1.~~5~~4) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.***]

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Hill, Krista [khill@torys.com]
To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 24, 2017 20:04:31
Attachment 1: @

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View the original item

All,

We discussed Oslers’ two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you’d like to discuss th

Attachments:

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Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....docx (83 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855675~201704250005000000~Z~D1369C590FB0A00AC618D66699C20251&AttachmentId=5Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....docx

RE_ Ontario Fair Hydro Plan.rtf

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To: Smith, Elliot [ESmith@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: King, Richard [rking@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Milligan, Peter [PMilligan@osler.com]; Innes, Michael [MInnes@osler.com]; Hill, Krista [khill@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 24, 2017 20:04:31
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: image004.jpg
Attachment 5: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....docx

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All,

We discussed Oslers' two comments in the email below and include further revisions (highlighted in green) to sections 11xx(4), 12xx(4) and 53.1. Please let us know if you'd like to discuss the changes. Regards, Krista

P. 416.865.7953 | F. 416.865.7380 | 1.800.505.8679

From: Smith, Elliot [mailto:ESmith@osler.com]

Sent: April-23-17 5:53 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>
Subject: RE: Ontario Fair Hydro Plan

Please find enclosed Osler’s comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Sebastiano, Rocco
Sent: Sunday, April 23, 2017 2:40 PM
To: Mansoori, Nina <nmansoori@torys.com>; 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Cc: Smith, Elliot <ESmith@osler.com>; King, Richard <rking@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Milligan, Peter <PMilligan@osler.com>; Innes, Michael <MInnes@osler.com>

Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Sunday, April 23, 2017 11:20 AM
To: 'Kacaba, Jennifer (ENERGY)' <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Sebastiano, Rocco <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian,

Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; Leibel, Robbie <rleibel@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary

(Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes

summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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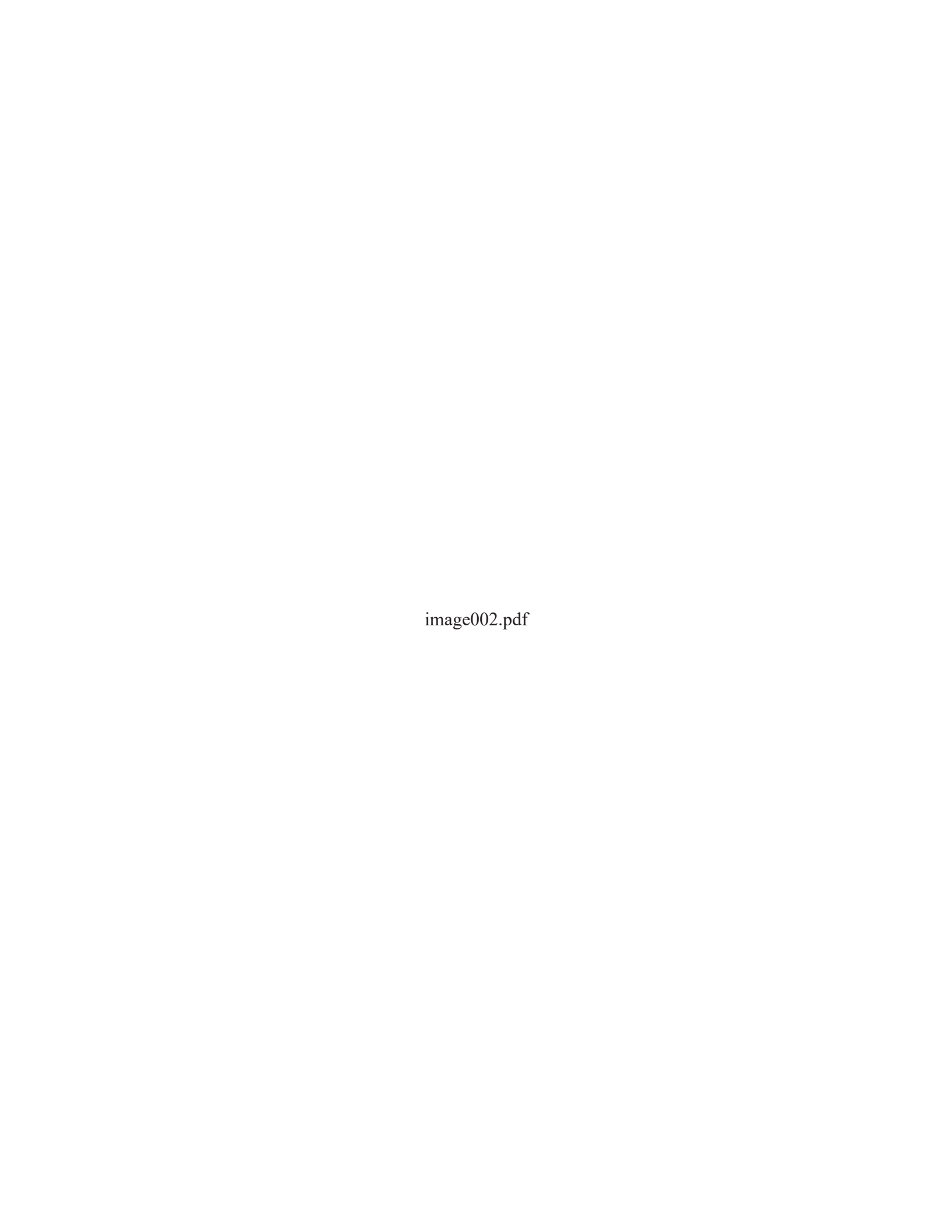
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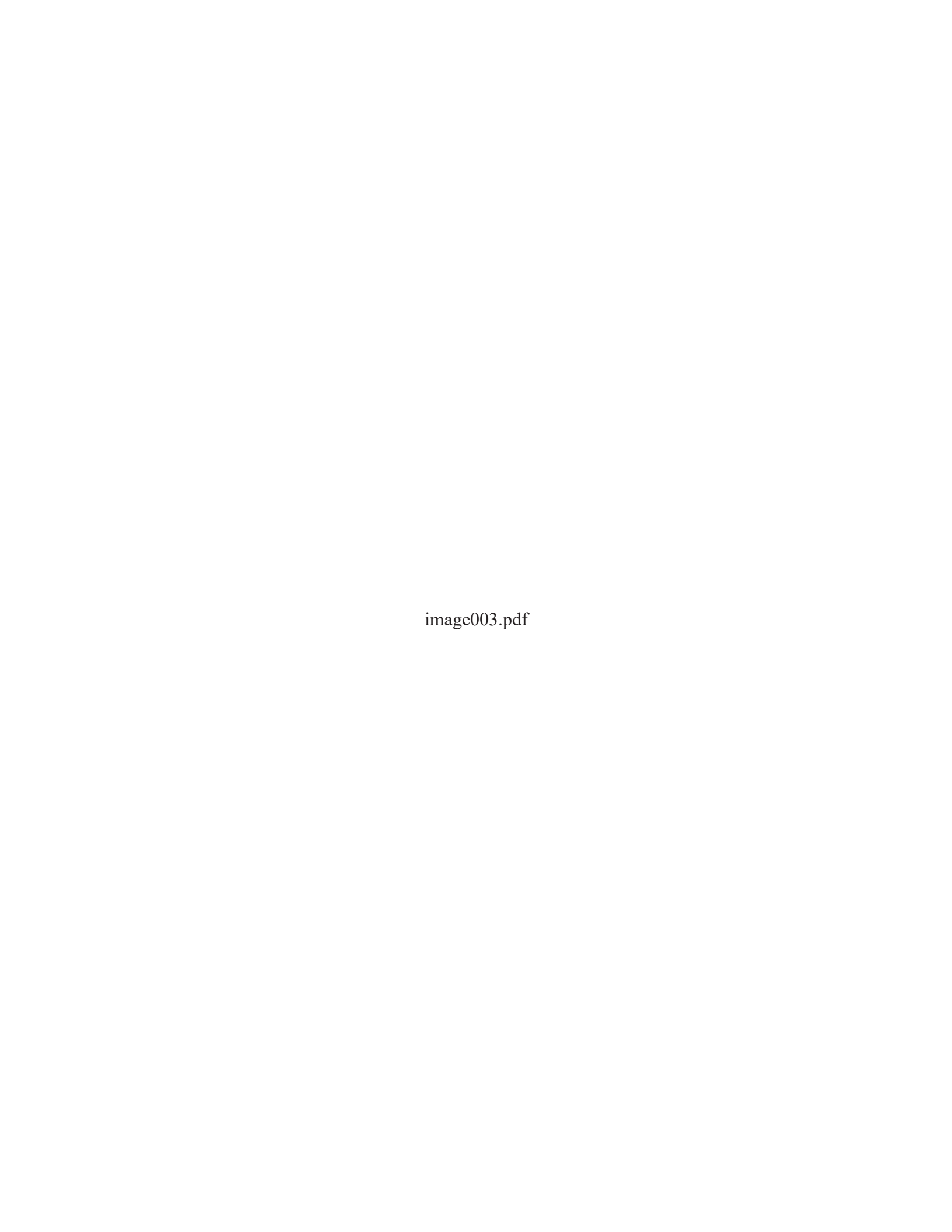
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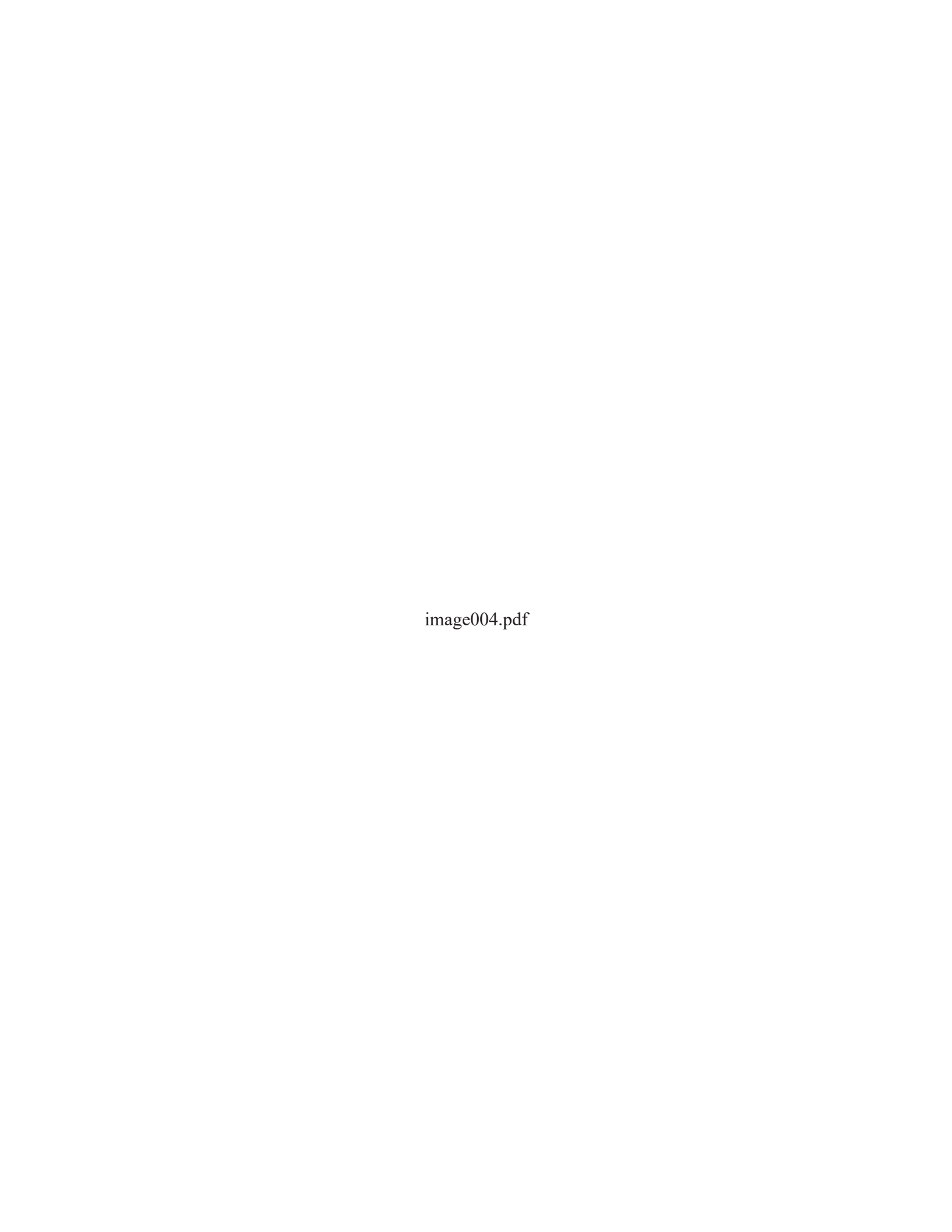
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TORYS
LLP

Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation (....pdf

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held~~, and are deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held~~, and shall be deemed to be held,~~ in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) ~~Subject to subsection (1.4) and d~~Despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity) in any proceeding or otherwise.

~~**Exception**~~

~~(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.~~

Definition, financing entity

(1.~~5~~4) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.***]

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
Attachment 1: image9b9365.JPG
Attachment 2: New Sections.DOCX

All,

In case it is helpful for this afternoon's meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a

view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset

(although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the

investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>;

maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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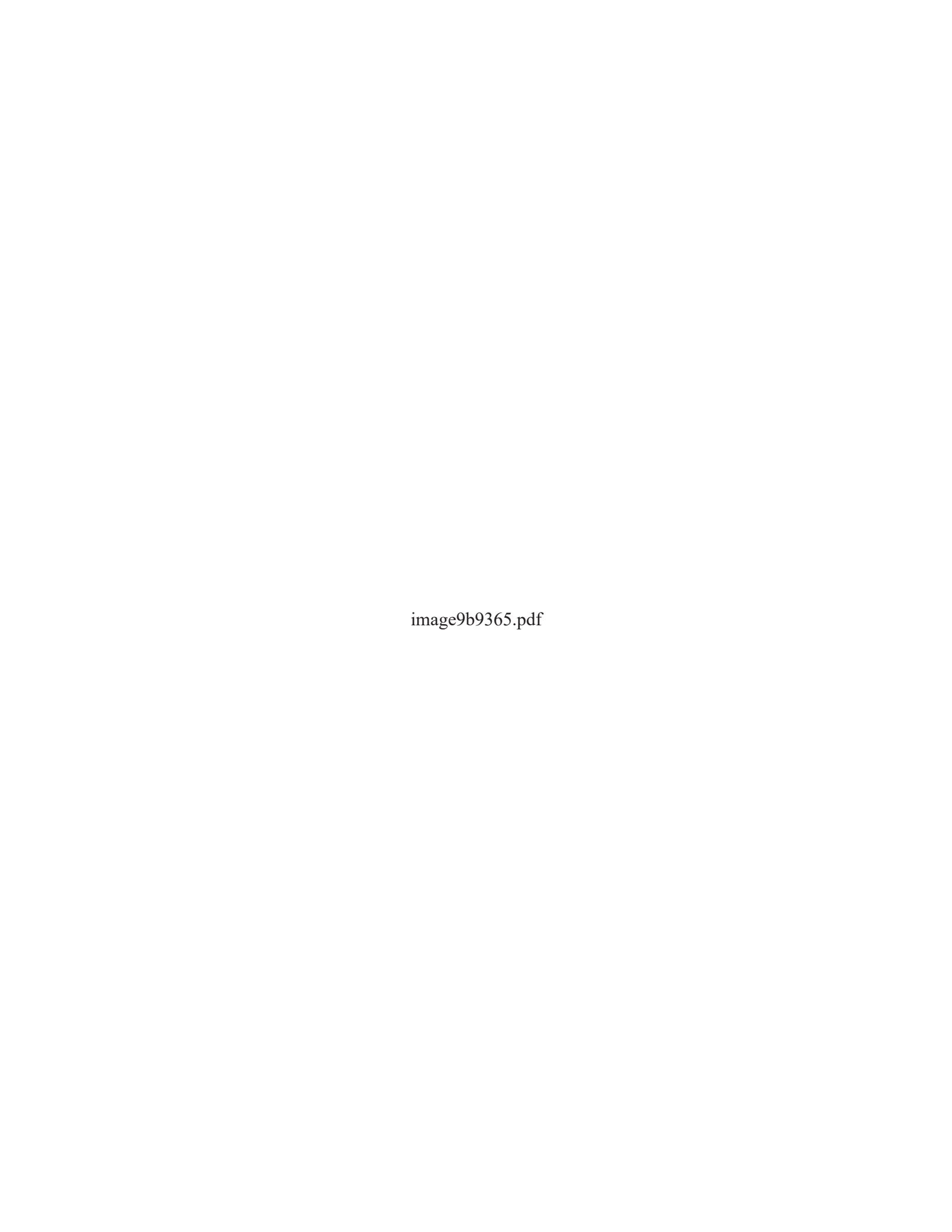
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New Sections.pdf

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, "payment obligations as may be prescribed").

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the

FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all "green energy".

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a "collective rights agreement" affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

"Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to ad

Attachments:

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From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

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Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS);

rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: @

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to ad

Attachments:

Fair Hydro Plan Act (April 26 2017) Consultation v4.docx (140 KB)

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

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All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Schedule 1 Estimated finance amount

PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Schedule 1 Estimated finance amount

PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Confidential Draft

RE_ Ontario Fair Hydro Plan.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: Feldman, Michael [mfeldman@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:53:33
Attachment 1: imagec5fcbe.JPG
Attachment 2: Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).DOCX
Attachment 3: Blackline - Fair Hydro Plan Act (Torys comments).pdf

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All,

Further to Michael's email, please find attached a mark-up of the draft Bill containing OPG and Torys' consolidated comments. Please note that this draft remains subject to the continuing review of OPG.

Thanks,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Feldman, Michael
Sent: April-26-17 5:58 PM
To: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>;

mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>; Saulnier, Brett <bsaulnier@torys.com>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

Major Issues

1. It is critically important to have a definition of "transfer" that is broad enough. We had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine

these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister’s rights will not extend to OPG’s rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG’s issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing

Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for "Standing and Remedies" of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

<u>Minor Points</u>

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of "refinancing" doesn't work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

Michael K. Feldman

P. 416.865.7513

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-26-17 12:39 PM

To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be

proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act,

2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the amount of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998* **[NTD: As payments made under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph]**, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 25xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." or "OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation, as may be further prescribed; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") **[NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment asset, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the

Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive, on a monthly basis an invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different

proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty

(a) each clean energy adjustment is considered to be consistent with the fair allocation amount; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was in conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the sum of the estimated finance amount and the other cost amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced by electricity vendors to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The Minister shall calculate a fair allocation amount in respect of each reference period by the date that is **[20]** business days after the day this Act receives Royal Assent.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

ii. The expected number of specified consumers in respect of each reference period.

iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or the Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

Provision of updates to Minister

(4) The Financial Services Manager shall provide the Minister written notification of any updates to the calculation of the fair allocation amount made pursuant to subsection (1.3).

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment asset in accordance with this Act or for purposes of refinancing a funding obligation.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(2) The Financial Services Manager shall cause financing entities to incur funding obligations only in material conformity with the applicable Financing Plan.

Same

(3) For greater certainty, subsection 17xx (4) applies despite the failure of the Financial Services Manager to comply with subsection (2).

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) Each transfer of a regulatory asset or a portion of it either creates or increases the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment interest owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, Ontario Power Generation Inc. or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset;

(B) transferring the regulatory asset for consideration; and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity); and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity).

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and any regulations made thereunder. **[NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Blackline - Fair Hydro Plan Act (Torys comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the ~~value~~**amount** of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, ~~1998,~~**1998** [NTD: As payments made*

under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph], and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined ~~in~~ under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~**25**xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." **or "OPG"** means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means~~, subject to the regulations,~~ **the incurrence of debt in connection with** a redemption, repayment or repurchase of a funding obligation**, as may be further prescribed**; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" ~~means [TBD]; ("French")~~**includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of**

IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") [NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~and reflect the fair allocation~~; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment ~~interest~~**asset**, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive**, on** a monthly **basis an** invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less

than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~**its** billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice **from an electricity vendor** that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty~~, subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment ~~was determined in a manner that was inconsistent with this Act~~**is considered to be consistent with the fair allocation amount**; and

(b) ~~whether the amount payable in respect of the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was ~~not~~ in ~~material~~ conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding **the sum of** the estimated finance amount **and the other cost amount** in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced **by electricity vendors** to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. ~~(2)~~ **1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.** The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from

electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager**, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~**by the date that is [20] business days after the day this Act receives Royal Assent**.

Certification

(1.2) The Minister shall certify to the Financial Services Manager **the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.**

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~**1.5**) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, **the Minister or** the Financial Services Manager**, as applicable,** shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The **Minister or the** Financial Services Manager**, as applicable,** shall calculate a fair allocation amount in accordance with such methods as the **Minister or the** Financial Services Manager**, as applicable,** considers appropriate, having regard to the requirements of this Act.

~~Notification~~**Provision of updates to Minister**

(4) The Financial Services Manager shall ~~notify~~**provide** the Minister ~~of the methods used to calculate~~**written notification of any updates to the calculation of** the fair allocation amount ~~and any changes to those methods~~**made pursuant to subsection (1.3)**.

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation **by the Minister** takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~**by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister**.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment ~~interest~~**asset** in accordance with this Act **or for purposes of refinancing a funding obligation**.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period~~. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference

period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

~~**Confidentiality**~~

~~(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:~~

~~1. The Financing Plan.~~

~~2. Reports referred to in subsection (3.1).~~

~~3. Any other document that would reveal information contained in the Financing Plan or the reports.~~

Amendments to plan

(~~6~~5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(~~7~~6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. **(1)** In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(~~1~~2) The Financial Services Manager shall **cause financing entities to** incur funding obligations **only** in material conformity with the applicable Financing Plan.

Same

(~~2~~3) For greater certainty, subsection 17xx (~~5~~4) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~2).

~~**Financing entities**~~

~~(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.~~

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in~~, or any obligations in respect of,~~ the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment ~~asset~~**interest** owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) ~~The first~~**Each** transfer of ~~the~~**a** regulatory asset or a portion of it **either** creates **or increases** the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover ~~amounts in respect of~~ the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for ~~amounts in respect of~~ the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor **and IESO** to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment ~~of amounts in respect~~ of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the

investment ~~asset~~**interest** owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject

to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~ccount~~**account** of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to

collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, ~~OPG~~**Ontario Power Generation Inc.** or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998
[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(~~iv~~**A**) incurring liabilities in relation to the regulatory asset**;**

(~~v~~**B**) transferring the regulatory asset for consideration; **and**

(~~vi~~**C**) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~**2017.**

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities **and performing other services on behalf of financing entities**, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a ~~special purpose~~ financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries **(other than, for greater certainty, such a subsidiary that is that financing entity)**; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity **(other than, for greater certainty, such a subsidiary that is that financing entity)**.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, ~~2017.~~**2017*** **and any regulations made thereunder. [NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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Statistics:	
	Count
Insertions	117
Deletions	68
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	189

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
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All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of p

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Fair Hydro Plan Act (April 20 2017) Consultation v3.docx (133 KB)
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RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Calwell, Carolyn (ENERGY) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:00:19
Attachment 1: Fair Hydro Act (April 17 2017) Consultationv5.docx

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Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Act (April 17 2017) Consultationv5.pdf

Version 2

This document is a draft intended for discussion purposes only. It may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended to assist the review of this discussion document only.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

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

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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11.

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

Confidential – Draft

3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

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"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature

[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

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

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

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(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

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IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of the clean energy adjustment to or for the benefit of the investment asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO may collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

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Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

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PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. (“French”)

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Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

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Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

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(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy adjustment for the reference period.

[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

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No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

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3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset
Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[Note: Consider location of this section with other roles of FSM above.]

Same

(1.1) The administration of an investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer

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upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and

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shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

5. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

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202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or

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establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:00:19
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Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also ha

Attachments:
Fair Hydro Act (April 17 2017) Consultationv5.docx (123 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=20170705175053578~20170417160020000~Z~D113AD771B52C3C916F3454CB4B4C321&AttachmentId=1Fair Hydro Act (April 17 2017) Consultationv5.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
Attachment 1: image182d05.JPG
Attachment 2: Blackline_(MOE-Draft).pdf
Attachment 3: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.DOCX

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com;

Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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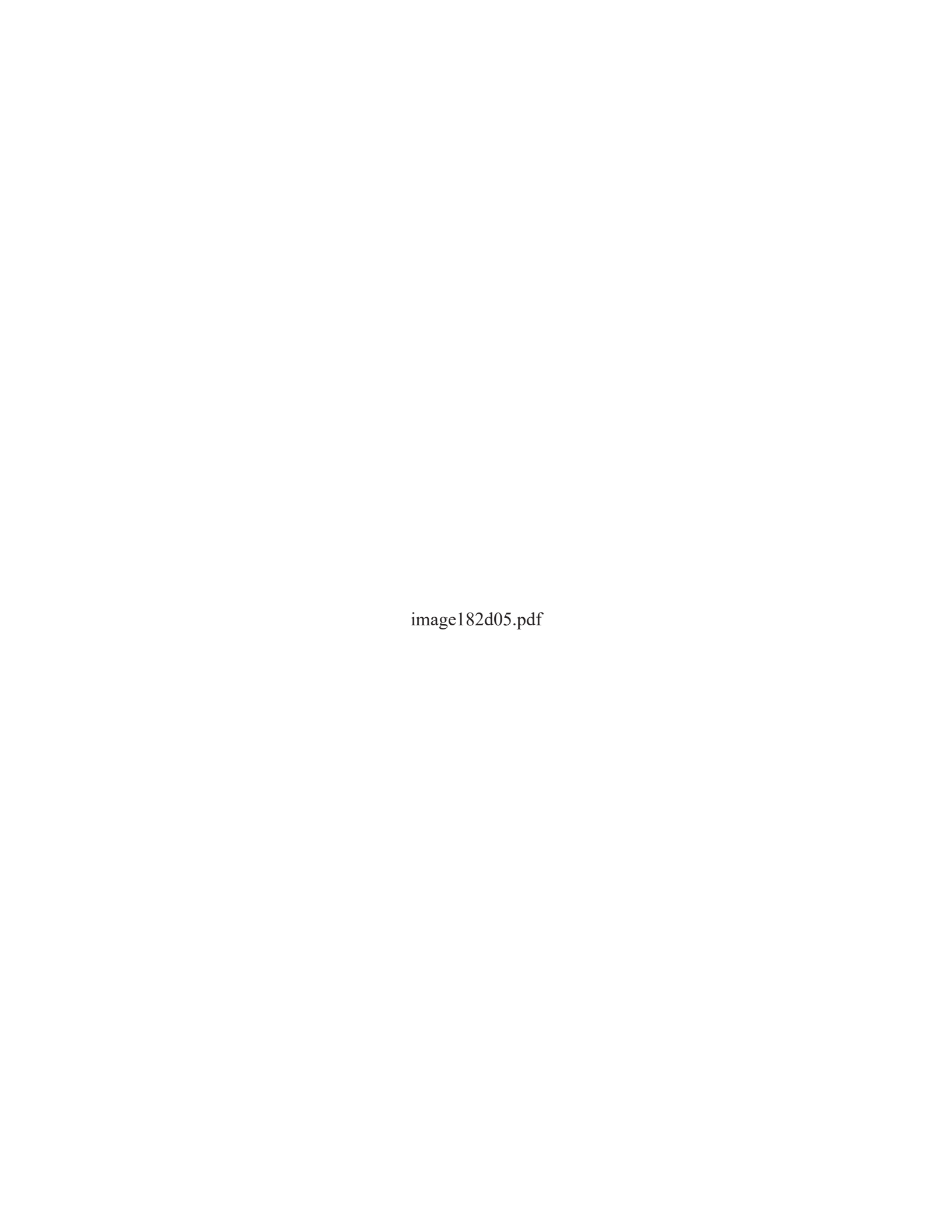
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Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable **the** phasing out of coal fired generation, ~~modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom~~**the modernization of electricity generation facilities**,[2] and conservation and demand management **initiatives**.

The Government of Ontario is committed to ensuring that the costs of these investments~~, and the raising of money to fund the investments,~~[3] are allocated fairly among present and future generations of consumers~~.~~ **, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. [NTD: Delete references to "raising of money". This may imply a tax scheme. The**

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] ~~Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits ~~determined~~ to be derived by ~~the~~**[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs**, as determined by ■ and described in ■**; ("French")

"clean energy costs" means, in respect of a reference period, ~~the value of~~ the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the ~~estimated costs~~**amounts** to be ~~incurred~~**reflected in adjustments made** by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for~~,

(i) **contracts for** renewable energy generation or capacity,

(ii) **contracts for** conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) **contracts for** natural gas generation ~~and~~**or** capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, ~~or~~

(v) payments ~~made or expected to be made~~ under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[43] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the ~~determination of~~**adjustment to** the rate payable for electricity **determined** in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** **for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights**]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

[43] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment ~~asset~~**interest** owner ~~under section x~~**as prescribed in the Regulations**; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the ~~investment asset~~**property rights** created as described in section 22xx; ("French")

"investment ~~asset~~**interest** owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset~~, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred~~;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity **and related services [NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means **each of**,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, **and** **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the ~~Fair Allocation~~**Financing** Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment ~~asset~~**interest** owner by applying the net proceeds obtained by the **investment interest** owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity **and related services**, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" ~~means~~**includes** an assignment, conveyance, disposition or sale **and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which**> *IESO purports to dispose of* <**or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest**; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable ~~[by the consumer?]~~ under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

[NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to ~~the use of~~ electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the< *IESO purports to dispose of* >its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[54]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~**one or more** provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect **the validity or enforceability of** a funding obligation ~~that was~~ incurred under this Act before the day that the provision ~~was~~**is** held to be invalid or ~~ceased~~**ceases** to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[65]

[54] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[65] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) to ~~ensure that clean energy costs are fairly~~**fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; [NTD: See comments above regarding references to raising money] and [NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time** ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation; and~~**"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not **do or cause or permit any agent of the Crown to** do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection ~~or,~~ remittance **or recovery** of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce**, alter or impair** the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset**, investment interest** or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving **or amending** of a regulation under this **Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other** Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the ~~Province of Ontario~~**Crown** with any person in respect of this Act, **or in relation to this Act,** including agreements regarding financial

commitments, financial arrangements, indemnities**, guarantees** or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations
(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act **as of May 1, 2017**; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by **[**the specified consumer, by an agent of the specified consumer or by**] [NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination
(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be

payable by a representative consumer in order for the representative consumer to receive ~~a~~**[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any **licensed** unit sub-meter provider who provides unit sub-metering for **the sub-meter customer on behalf of** the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate ~~mentioned~~**described** in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or **licensed** unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the ~~applicable~~ rate **described in subsection (2)** receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

~~Specified~~Electricity vendor to invoice specified consumers ~~to pay clean energy adjustment~~

8xx. ~~(1~~ **(1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. [NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

>Electricity vendor to collect<

*> (2) Each electricity vendor shall, as an agent of the IESO and the investment <**interest owners, collect amounts in respect of**> the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].* <

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes **an amount in respect of** a clean energy adjustment, a specified consumer shall pay ~~the clean energy adjustment~~**such amount** to the electricity vendor, as agent of **IESO and** the investment ~~asset~~**interest** owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(~~2~~**4**) For greater certainty, ~~subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment is ~~inconsistent~~**considered to be consistent** with the fair allocation calculation applicable at the time when the payment is due; and

(b) ~~whether the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(~~4~~5) An unpaid **amount in respect of a** clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the **specified** consumer to each investment ~~asset~~**interest** owner in respect of each **investment interest** owner's respective interest in the investment asset.

Same

(~~5~~6) The indebtedness mentioned in subsection (~~4~~5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

~~***<Irrevocability of clean energy adjustment>***~~

~~**9xx.** (1) The amount*<of the clean energy adjustment shown on>* an invoice issued to a specified consumer *<under this Act is determinative of the amount of>* the consumer's *<indebtedness created by>* the adjustment and*< is irrevocable upon invoicing the consumer and may not be set off or by passed.>*~~

~~***<Exception>***~~

~~*< (2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor>*.~~

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

   i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

   ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.] [NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment ~~asset~~**interest** owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those ~~accounts~~**amounts**:

1. Amounts described in subsection ~~12~~**11xx** (~~4~~**2**).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (~~6~~**5**), be held**, and are deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~**interest** owners in accordance with the regulations.

Collection of outstanding amounts~~, regulatory asset~~

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect ~~the difference~~**any outstanding IESO funding shortfall** from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

~~**Electricity vendor to invoice specified consumers**~~

>*Irrevocability of clean energy adjustment*<

12xx. (1) The ~~electricity vendor shall issue~~**amount in respect**> *of the clean energy adjustment shown on*< an invoice **issued** to ~~each~~**a** specified consumer ~~for~~>*under this Act is determinative of the amount of*< the consumer's ~~amount of~~>*indebtedness created by*< the clean energy adjustment> *is irrevocable upon invoicing the consumer and may not be set off or by passed.*<

>*Exception*<

> *(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor*<**, which error shall be corrected** in accordance with ~~the regulations~~**section 10xx(2)**.

~~**<*Electricity vendor to collect*>**~~

~~< *(2) Each electricity vendor shall, as an agent of the IESO and the investment* >asset owners, collect< *the clean energy adjustment from specified consumers [in accordance*~~

~~*with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].*~~ ~~>~~

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment ~~asset~~**interest** owner in accordance with subsection (5), be held**, and shall be deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~5~~**4**) to the IESO for the benefit of the investment ~~asset~~**interest** owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager **for purposes of section 16xx of the Act** if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager **for purposes of section 16xx of the Act**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~asset owner~~**interest owners**.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to **the IESO for distribution to** electricity vendors~~, including the IESO~~, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

~~Financial Services Manager~~Minister to calculate fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the ~~Financial Services Manager~~**Minister** shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The ~~time value of money or the rate of inflation~~**funding costs associated with the funding obligations**, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected **volumes of** electricity consumption ~~rates~~ for each reference period.

Allocation of fair adjustment

(3) If, before the ~~Financial Services Manager~~**Minister** has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The ~~Financial Services Manager~~**Minister** may amend the fair allocation calculation from time to time, as the ~~Financial Services Manager~~**Minister** considers appropriate, having regard to the requirements of this Act.

~~**Submission of fair allocation to Minister**~~

~~(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.~~

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the ~~Minister in writing.~~**Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. [NTD: There should be a tie in to section 7xx.]**

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period~~. **[NTD: See note after 15xx(1.1)(2)]**.

2. Incurrences and transfers should be implemented in a manner that~~, as~~ the Financial Services Manager ~~considers to be reasonable, is cost effective and~~**determines reasonably** reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations ~~incurred~~**that** would ~~not~~ be payable during the reference period ~~in an amount that exceeds~~**would not exceed** the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(~~4~~**5**) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*] **[NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

~~**<*Implementation of Financing Plan*>**~~

~~**17xx.** (1) The Financial Services Manager shall< *incur funding obligations and make transfers in material conformity with the applicable*> Financing Plan.~~

~~**Same**~~

~~(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).~~

Financing entities

17xx. (~~3~~**1**) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

>Implementation of Financing Plan<

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to> *incur funding obligations and make transfers in material conformity with the applicable*< **Financing Plan.**

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(~~3~~**4**) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity),** the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to ~~Fair Allocation~~Financing Plan

(~~4~~**5**) ~~No~~**Each** funding obligation incurred and ~~no~~**each** transfer made by ~~the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X~~**a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount**.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize the IESO to do the following~~**authorizing the IESO to [NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. ~~Create~~**establish** a variance account for the purposes of this Act~~.~~**;**

2. ~~Record~~**record** the IESO funding shortfall in the variance account from time to time~~.~~ **[NTD: monthly?]; and**

3. ~~Recover~~**recover** the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The **accounting** order of the Board **made under (1)** shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the **accounting** order of the Board **made under (1)**.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts **that would be** issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other ~~restrictions~~**conditions** as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan~~, which transfer creates the investment asset~~.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in~~, or any~~ **the regulatory asset or in the related investment asset. [NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of~~, the regulatory asset or in~~ the investment asset will be primarily created by ~~the transfer~~ contract.]**

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner and~~ acquires an investment interest **and becomes an investment interest owner**.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~**interest** owner of the regulatory asset,

and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~**of investment interest owners**:

1. The right to impose, bill, invoice, collect ~~and~~, receive **and recover** the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive ~~and~~, collect **and recover** all amounts in respect of the clean energy adjustment that are imposed, billed ~~and~~, invoiced **and recoverable** under this Act, including any ~~amounts that~~**and** all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset~~**investment interest** owner's ~~regulatory asset~~**investment interest**.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(~~2~~**3**) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~**interest** owner or an owner of distribution system assets in the Province;

(b) in connection with any default~~, bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(~~3~~4) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security Act*~~ **Part III of this Act. [NTD: PPSA has nothing to do with it.]**

Collective action required

(~~4~~5) If the investment ~~asset~~**interest** owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset~~**interest** owner collectively and in coordination with all other investment ~~asset~~**interest** owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~**interest** owner as a collective in accordance with its terms.

[Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment ~~asset~~**interest** owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~**interest** owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~**interest** owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~**interest** owner shall have priority over any liens in favour of such other persons**, other than those granted in accordance with section 28xx of the Act**.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~**interest** owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under ~~the~~**an** investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment ~~asset~~**interest** owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other~~ account of any electricity vendor~~, the IESO~~, an agent of an electricity vendor~~ or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~**interest** owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~**interest** owner or secured party by any person or entity authorized to collect the clean energy adjustment, **including** defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment of the Fair Allocation Plan~~**calculation of the fair allocation amount or the fair adjustment**.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28~~7~~[76]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

~~7~~[76] Note - see s. 51 of the Electricity Act, 1998

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

~~38~~**39xx.** The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~**c**) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~.~~**;**

(~~b~~**d**) governing the inclusion of ~~adjustments~~**information** under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in

activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, ~~2017, which activities may include,~~ **2017;***

(iv) incurring liabilities in relation to the regulatory asset**;**

(v) transferring the regulatory asset for consideration; **and**

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~ **2017.***

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that~~>*the Ontario Fair Hydro Plan*< *Act*>, *2017*< and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan*~~**that** Act, ~~*2017,*~~ including ~~the following:~~ ~~1.~~ ~~Entering~~**entering** into contracts and undertakings on behalf of <~~*special purpose*~~>financing entities~~, including pre-formation contracts and undertakings and as principal in relation to matters permitted by <*the Ontario Fair Hydro Plan*> *Act*<, *2017*>~~ **and performing other services on behalf of financing entities,** subject to the right ~~of reimbursement from amounts available~~ to **be paid by** the financing ~~entity.~~**entities for those services.**[7]

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

[7] **NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.**

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.~~

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create **or invest in** one or more subsidiaries, trusts**, partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new Act.]~~***Ontario Fair Hydro Plan Act, 2017.***

205x. ~~Section 70 of the Act would be amended by adding the following subsection~~Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any >*special purpose* <**financing entities established under and for the purposes of that Act.**

~~*[Note - still need to draft new subs. 70 (2.1)]*~~

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined **by the Financial Services Manager** by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment ~~asset~~**interest** owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the **investment asset** owners under a funding obligation, ~~excluding any payment made by applying the~~**reduced by any** proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, **original issue discount** scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received **or expected to be received** by or on behalf of investment ~~asset~~**interest** owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ~~2~~**ii** from the amount calculated under paragraph ~~1.~~**i.**

3. The sum of all amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve ~~at the end of~~**for** the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners that were incurred or committed to

directly or indirectly in connection with the **acquisition, maintenance or collection of the investment asset or the** incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve ~~at the end of~~**for** the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment ~~asset~~**interest** owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment ~~asset~~**interest** owners during the reference period ~~from deposits previously made as described in paragraph 1.~~.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Document comparison by Workshare Compare on April-23-17 11:09:30 AM

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Padding cell	

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Style change	0
Format changed	0
Total changes	566

Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.pdf

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held, and are deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held, and shall be deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: Feldman, Michael [mfeldman@torys.com]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
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All,

Further to Michael’s email, please find attached a mark-up of the draft Bill containing OPG and Torys’ consolidated comments. Please note that this draft remains subject to the continuing

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From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
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RE_ Ontario Fair Hydro Plan.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
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All – please find attached OPG and Torys’ consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing revi

Attachments:

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RE_ Ontario Fair Hydro Plan.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; Feldman, Michael [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; Leibel, Robbie [rleibel@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
Attachment 1: image182d05.JPG
Attachment 2: Blackline_(MOE-Draft).pdf
Attachment 3: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.DOCX

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com;

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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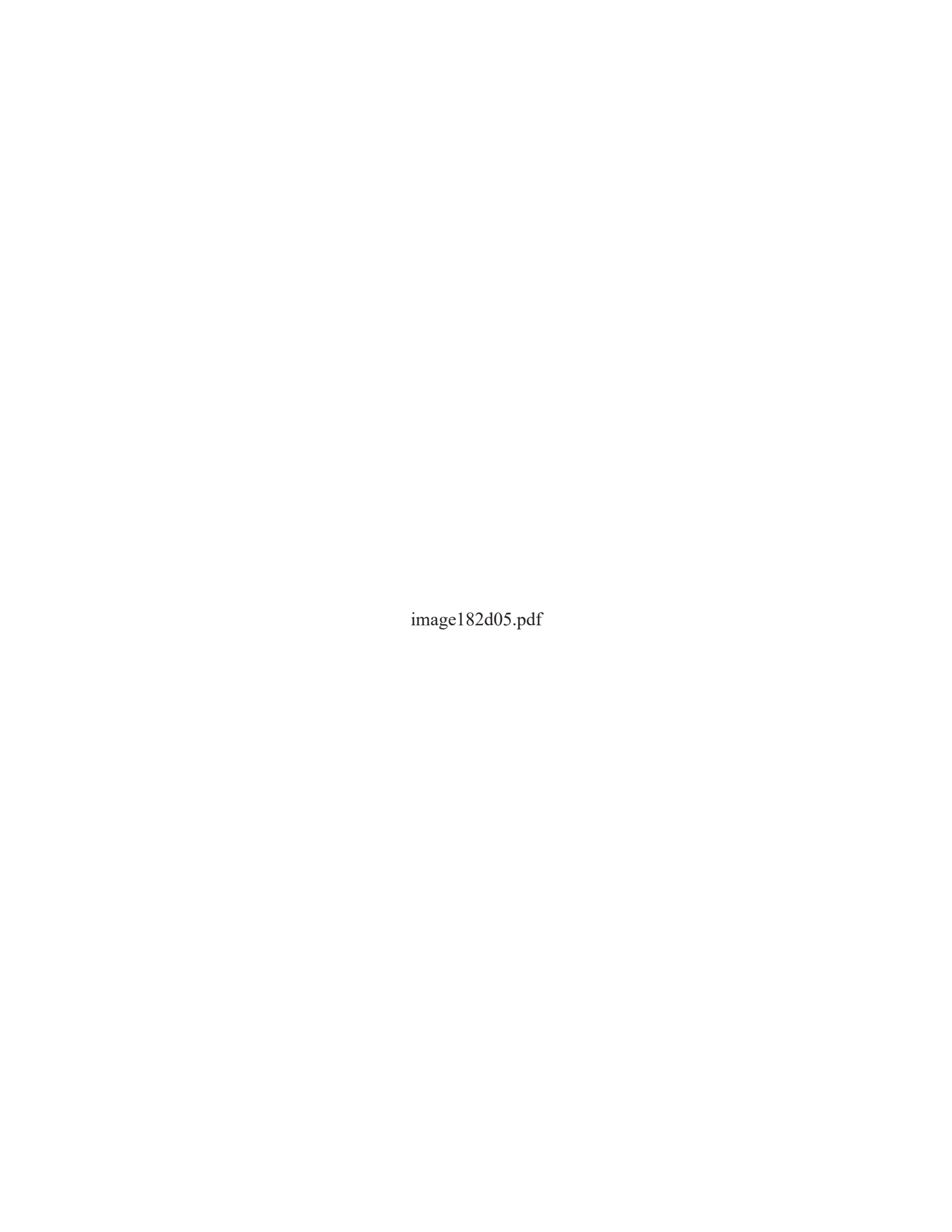
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Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable **the** phasing out of coal fired generation, ~~modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom~~**the modernization of electricity generation facilities**,[2] and conservation and demand management **initiatives**.

The Government of Ontario is committed to ensuring that the costs of these investments~~, and the raising of money to fund the investments,~~[3] are allocated fairly among present and future generations of consumers~~.~~ **, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. [NTD: Delete references to "raising of money". This may imply a tax scheme. The**

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] ~~Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits ~~determined~~ to be derived by ~~the~~**[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs**, as determined by ■ and described in ■**; ("French")

"clean energy costs" means, in respect of a reference period, ~~the value of~~ the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the ~~estimated costs~~**amounts** to be ~~incurred~~**reflected in adjustments made** by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for~~,

(i) **contracts for** renewable energy generation or capacity,

(ii) **contracts for** conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) **contracts for** natural gas generation ~~and~~**or** capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, ~~or~~

(v) payments ~~made or expected to be made~~ under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[43] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the ~~determination of~~**adjustment to** the rate payable for electricity **determined** in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** **for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights**]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

[43] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment ~~asset~~**interest** owner ~~under section x~~**as prescribed in the Regulations**; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the ~~investment asset~~**property rights** created as described in section 22xx; ("French")

"investment ~~asset~~**interest** owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset~~, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred~~;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity **and related services [NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means **each of**,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, **and** **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the ~~Fair Allocation~~**Financing** Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment ~~asset~~**interest** owner by applying the net proceeds obtained by the **investment interest** owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity **and related services**, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" ~~means~~**includes** an assignment, conveyance, disposition or sale **and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which**> *IESO purports to dispose of* <**or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest**; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable ~~[by the consumer?]~~ under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

[NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to ~~the use of~~ electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the< *IESO purports to dispose of* >its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[54]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~**one or more** provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect **the validity or enforceability of** a funding obligation ~~that was~~ incurred under this Act before the day that the provision ~~was~~**is** held to be invalid or ~~ceased~~**ceases** to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[65]

[54] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[65] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) to ~~ensure that clean energy costs are fairly~~**fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; [NTD: See comments above regarding references to raising money] and [NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time** ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation; and~~**"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not **do or cause or permit any agent of the Crown to** do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection ~~or,~~ remittance **or recovery** of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce**, alter or impair** the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset**, investment interest** or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving **or amending** of a regulation under this **Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other** Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the ~~Province of Ontario~~**Crown** with any person in respect of this Act, **or in relation to this Act,** including agreements regarding financial

commitments, financial arrangements, indemnities**, guarantees** or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations
(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act **as of May 1, 2017**; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by **[**the specified consumer, by an agent of the specified consumer or by**] [NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination
(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be

payable by a representative consumer in order for the representative consumer to receive ~~a~~**[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any **licensed** unit sub-meter provider who provides unit sub-metering for **the sub-meter customer on behalf of** the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate ~~mentioned~~**described** in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or **licensed** unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the ~~applicable~~ rate **described in subsection (2)** receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

~~Specified~~Electricity vendor to invoice specified consumers ~~to pay clean energy adjustment~~

8xx. ~~(1~~ **(1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. [NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

>Electricity vendor to collect<

*> (2) Each electricity vendor shall, as an agent of the IESO and the investment <**interest owners, collect amounts in respect of**> the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].* <

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes **an amount in respect of** a clean energy adjustment, a specified consumer shall pay ~~the clean energy adjustment~~**such amount** to the electricity vendor, as agent of **IESO and** the investment ~~asset~~**interest** owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(~~2~~**4**) For greater certainty, ~~subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment is ~~inconsistent~~**considered to be consistent** with the fair allocation calculation applicable at the time when the payment is due; and

(b) ~~whether the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(~~4~~5) An unpaid **amount in respect of a** clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the **specified** consumer to each investment ~~asset~~**interest** owner in respect of each **investment interest** owner's respective interest in the investment asset.

Same

(~~5~~6) The indebtedness mentioned in subsection (~~4~~5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

~~***<Irrevocability of clean energy adjustment>***~~

~~**9xx.** (1) The amount*<of the clean energy adjustment shown on>* an invoice issued to a specified consumer *<under this Act is determinative of the amount of>* the consumer's *<indebtedness created by>* the adjustment and*< is irrevocable upon invoicing the consumer and may not be set off or by passed.>*~~

~~***<Exception>***~~

~~*< (2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor>*.~~

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

   i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

   ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.] [NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment ~~asset~~**interest** owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those ~~accounts~~**amounts**:

1. Amounts described in subsection ~~12~~**11xx** (~~4~~**2**).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (~~6~~**5**), be held**, and are deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~**interest** owners in accordance with the regulations.

Collection of outstanding amounts~~, regulatory asset~~

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect ~~the difference~~**any outstanding IESO funding shortfall** from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

~~**Electricity vendor to invoice specified consumers**~~

>*Irrevocability of clean energy adjustment*<

12xx. (1) The ~~electricity vendor shall issue~~**amount in respect**> *of the clean energy adjustment shown on*< an invoice **issued** to ~~each~~**a** specified consumer ~~for~~>*under this Act is determinative of the amount of*< the consumer's ~~amount of~~>*indebtedness created by*< the clean energy adjustment> *is irrevocable upon invoicing the consumer and may not be set off or by passed.*<

>*Exception*<

> *(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor*<**, which error shall be corrected** in accordance with ~~the regulations~~**section 10xx(2)**.

~~**<*Electricity vendor to collect*>**~~

~~< *(2) Each electricity vendor shall, as an agent of the IESO and the investment* >asset owners, collect< *the clean energy adjustment from specified consumers [in accordance*~~

~~*with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].*~~ ~~>~~

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment ~~asset~~**interest** owner in accordance with subsection (5), be held**, and shall be deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~5~~**4**) to the IESO for the benefit of the investment ~~asset~~**interest** owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager **for purposes of section 16xx of the Act** if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager **for purposes of section 16xx of the Act**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~asset owner~~**interest owners**.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to **the IESO for distribution to** electricity vendors~~, including the IESO~~, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

~~Financial Services Manager~~Minister to calculate fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the ~~Financial Services Manager~~**Minister** shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The ~~time value of money or the rate of inflation~~**funding costs associated with the funding obligations**, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected **volumes of** electricity consumption ~~rates~~ for each reference period.

Allocation of fair adjustment

(3) If, before the ~~Financial Services Manager~~**Minister** has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The ~~Financial Services Manager~~**Minister** may amend the fair allocation calculation from time to time, as the ~~Financial Services Manager~~**Minister** considers appropriate, having regard to the requirements of this Act.

~~**Submission of fair allocation to Minister**~~

~~(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.~~

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the ~~Minister in writing.~~**Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. [NTD: There should be a tie in to section 7xx.]**

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period~~. **[NTD: See note after 15xx(1.1)(2)]**.

2. Incurrences and transfers should be implemented in a manner that~~, as~~ the Financial Services Manager ~~considers to be reasonable, is cost effective and~~**determines reasonably** reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations ~~incurred~~**that** would ~~not~~ be payable during the reference period ~~in an amount that exceeds~~**would not exceed** the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(~~4~~**5**) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*] **[NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

~~**<*Implementation of Financing Plan*>**~~

~~**17xx.** (1) The Financial Services Manager shall< *incur funding obligations and make transfers in material conformity with the applicable*> Financing Plan.~~

~~**Same**~~

~~(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).~~

Financing entities

17xx. (~~3~~**1**) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

>Implementation of Financing Plan<

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to> *incur funding obligations and make transfers in material conformity with the applicable*< **Financing Plan.**

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(~~3~~**4**) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity),** the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to ~~Fair Allocation~~Financing Plan

(~~4~~**5**) ~~No~~**Each** funding obligation incurred and ~~no~~**each** transfer made by ~~the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X~~**a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount**.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize the IESO to do the following~~**authorizing the IESO to [NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. ~~Create~~**establish** a variance account for the purposes of this Act~~.~~**;**

2. ~~Record~~**record** the IESO funding shortfall in the variance account from time to time~~.~~ **[NTD: monthly?]; and**

3. ~~Recover~~**recover** the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The **accounting** order of the Board **made under (1)** shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the **accounting** order of the Board **made under (1)**.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts **that would be** issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other ~~restrictions~~**conditions** as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan~~, which transfer creates the investment asset~~.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in~~, or any~~ **the regulatory asset or in the related investment asset. [NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of~~, the regulatory asset or in~~ the investment asset will be primarily created by ~~the transfer~~ contract.]**

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner and~~ acquires an investment interest **and becomes an investment interest owner**.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~**interest** owner of the regulatory asset,

and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~**of investment interest owners**:

1. The right to impose, bill, invoice, collect ~~and~~, receive **and recover** the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive ~~and~~, collect **and recover** all amounts in respect of the clean energy adjustment that are imposed, billed ~~and~~, invoiced **and recoverable** under this Act, including any ~~amounts that~~**and** all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset~~**investment interest** owner's ~~regulatory asset~~**investment interest**.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(~~2~~**3**) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~**interest** owner or an owner of distribution system assets in the Province;

(b) in connection with any default~~, bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(~~3~~4) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security Act*~~ **Part III of this Act. [NTD: PPSA has nothing to do with it.]**

Collective action required

(~~4~~5) If the investment ~~asset~~**interest** owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset~~**interest** owner collectively and in coordination with all other investment ~~asset~~**interest** owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~**interest** owner as a collective in accordance with its terms.

[Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment ~~asset~~**interest** owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~**interest** owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~**interest** owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~**interest** owner shall have priority over any liens in favour of such other persons**, other than those granted in accordance with section 28xx of the Act**.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~**interest** owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under ~~the~~**an** investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment ~~asset~~**interest** owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other~~ account of any electricity vendor~~, the IESO~~, an agent of an electricity vendor~~ or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~**interest** owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~**interest** owner or secured party by any person or entity authorized to collect the clean energy adjustment, **including** defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment of the Fair Allocation Plan~~**calculation of the fair allocation amount or the fair adjustment**.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28~~7~~[76]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

~~7~~[76] Note - see s. 51 of the Electricity Act, 1998

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

~~38~~**39xx.** The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~**c**) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~.~~**;**

(~~b~~**d**) governing the inclusion of ~~adjustments~~**information** under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in

activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, ~~2017, which activities may include,~~ **2017;***

(iv) incurring liabilities in relation to the regulatory asset**;**

(v) transferring the regulatory asset for consideration; **and**

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~ **2017.***

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that~~>*the Ontario Fair Hydro Plan*< *Act*>, *2017*< and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan*~~**that** Act, ~~*2017,*~~ including ~~the following:~~ ~~1.~~ ~~Entering~~**entering** into contracts and undertakings on behalf of <~~*special purpose*~~>financing entities~~, including pre-formation contracts and undertakings and as principal in relation to matters permitted by <*the Ontario Fair Hydro Plan*> *Act*<, *2017*>~~ **and performing other services on behalf of financing entities,** subject to the right ~~of reimbursement from amounts available~~ to **be paid by** the financing ~~entity.~~**entities for those services.**[7]

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

[7] **NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.**

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.~~

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create **or invest in** one or more subsidiaries, trusts**, partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new Act.]~~***Ontario Fair Hydro Plan Act, 2017.***

205x. ~~Section 70 of the Act would be amended by adding the following subsection~~Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any >*special purpose* <**financing entities established under and for the purposes of that Act.**

~~*[Note - still need to draft new subs. 70 (2.1)]*~~

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined **by the Financial Services Manager** by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment ~~asset~~**interest** owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the **investment asset** owners under a funding obligation, ~~excluding any payment made by applying the~~**reduced by any** proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, **original issue discount** scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received **or expected to be received** by or on behalf of investment ~~asset~~**interest** owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ~~2~~**ii** from the amount calculated under paragraph ~~1.~~**i.**

3. The sum of all amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve ~~at the end of~~**for** the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners that were incurred or committed to

directly or indirectly in connection with the **acquisition, maintenance or collection of the investment asset or the** incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve ~~at the end of~~**for** the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment ~~asset~~**interest** owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment ~~asset~~**interest** owners during the reference period ~~from deposits previously made as described in paragraph 1.~~.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Document comparison by Workshare Compare on April-23-17 11:09:30 AM

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Format changed	0
Total changes	566

Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.pdf

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held, and are deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held, and shall be deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

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CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
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Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

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To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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56 Wellesley Street West, 18th Floor.

Toronto

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(416) 212-4867

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To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com);

Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system ~~is~~will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

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"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~its billing practices and invoices to reflect the new rates.

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Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

(~~5~~4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

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Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

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Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period~~, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period~~.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

~~(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.~~

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

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Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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Version 4

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

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"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

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"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

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i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

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5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

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Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1,

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2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's interest in the investment asset.

Same

(4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

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Recovery from sub-meter consumers

(5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

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Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

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Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1) Each transfer of a regulatory asset or a portion of it either creates or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

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1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the

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investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

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Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

---

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017*; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d)

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

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ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: WSComparison__6714670_1-_6712834_3.pdf
Attachment 2: SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Wednesday, April 26, 2017 12:39 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca)
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com);

Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com);

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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system ~~is~~will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

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"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~its billing practices and invoices to reflect the new rates.

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Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

(~~5~~4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

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Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

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Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period~~, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period~~.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

~~(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.~~

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

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Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

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"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

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"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

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i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

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5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

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Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1,

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2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's interest in the investment asset.

Same

(4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

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Recovery from sub-meter consumers

(5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

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Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

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Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1) Each transfer of a regulatory asset or a portion of it either creates or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

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1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the

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investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

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Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017*; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d)

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

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ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Michael Boll [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce
Attachments:
WSComparison__6714670_1-_6712834_3.pdf (792 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855682~201704262215340000~Z~D13695F16A341173666E42C91A2A0BE1&AttachmentId=1WSComparison__6714670_1-_6712834_3.pdf

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855682~201704262215340000~Z~D13695F16A341173666E42C91A2A0BE1&AttachmentId=2SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Monday, April 17, 2017 12:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Persaud, Donnie - Debt Capital Markets'; Hill, Krista; 'Turnbull, Vickie'; 'Dal Bello, David'; Mansoori, Nina; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; Emes, Aaron; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Myers, Jonathan; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Feldman, Michael
Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 09:46:11
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Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their co

Attachments:

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From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 09:46:11
Attachment 1: SETOR1-#6712816-v4-Fair_Hydro_Act.docx
Attachment 2: WSComparison__6712834_1-_6712816_4.pdf

Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their comments especially around the requirements to be met in order to recognize and de-recognize the regulatory asset.

While not reflected in our mark-up, we think that Part III with respect to the billing and collection of the Clean Energy Adjustment would benefit from a reorganization. First, it might be moved later in the statute, after both Part V with respect to the Regulatory Asset and Part VI with respect to the Investment Asset. Its current placement suggests that it is relevant to both the regulatory asset and the investment asset , which is not the case. Second it might be internally reorganized so that it deals sequentially with the following subjects:

1. Determination of the amount of the Clean Energy Adjustment, which in our view should be done by the Financial Services Manager (currently in Sections 10(1) and 10(3).

2. Determination by the OEB of the rate necessary to recover the Clean Energy Adjustment (currently in Section 10(2)). It is not clear to us that there is a role for the IESO in between the OEB and the electricity vendors, but happy to discuss.

3. Obligation of electricity vendors to invoice (Section 12)

4. Obligation of consumers to pay invoice amount (Section 8)

5. Obligation of electricity vendors to collect and remit (Section 12(2) to 12(6)). We need to provide for the collection standard and in particular make clear that they do not guarantee collection from customers.

6. Obligation of IESO to collect and remit (Sections 11(2) to 11(5). We need to provide for the collection standard and in particular make clear that we do not guarantee performance by the electricity vendors.

Peter

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Thursday, April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our

thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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SETOR1-#6712816-v4-Fair_Hydro_Act.pdf

Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

---

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid by the IESO referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]**

a. procurement contracts for:

a. renewable energy generation or capacity,

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b. conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. energy efficiency,

d. natural gas generation and capacity, excluding such contracts as may be prescribed, or [**NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")
[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

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"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment**

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Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment; or **[NTD: the clean energy adjustment is allocated and collected rateably]**

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

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"average baseline invoice amount" means the monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), to more fairly recognize clean energy benefits and allocate the clean energy costs among present and future generations of specified consumers, the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with the terms of payment specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

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(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. The Financial Services Manager shall estimate the finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method. **[NTD: the true up amount may be either positive or negative.]**

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3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs,

   ii. aggregate variations in billings due to variations in electricity consumption, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to receive

(2) The IESO shall, as an agent of the investment asset owners, receive the clean energy adjustment paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of

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the *Electricity Act, 1998]*. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.] [NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].**

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners. **[NTD: see sections with security interest language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer in respect of the clean energy adjustment, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(3)Each electricity vendor shall, as an agent of the investment asset owners, collect the clean energy adjustment paid by specified consumers [in accordance with the regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred .

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

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[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account
20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same
(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record in the variance account an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same
(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

Same
(4) IESO shall record in the variance account all payments received by the IESO resulting from the right of recovery under section 21 or any transfer under section 22.

Recording determinative
(5) Each recording by the IESO in the variance account is determinative as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner
(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established
21xx. (1) IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance accounts.

Same

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

(3) IESO shall not be entitled to collect all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity. **[NTD: not necessary and unhelpful to refer to the Financing Plan in relation to transfers]**.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

Vesting, deemed Perfection

(3) Each transfer of a regulatory asset shall be deemed to have been and shall be perfected and vested as against IESO and all other persons who have claims of any kind against IESO or the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer or have registered or otherwise perfected their interest.

PART VI
THE INVESTMENT ASSET

Investment asset

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest**.**

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(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

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[NTD: the earlier provisions provided that the PPSA does apply]

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

[7] Note - see s. 51 of the Electricity Act, 1998

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(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. incurring liabilities in relation to the regulatory asset

b. transferring the regulatory asset for consideration;

c. acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

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Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
FINANCE AMOUNT

Finance amount

1. The finance amount for a reference period shall be the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities ~~in the Province~~ for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

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The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid by the IESO ~~under~~referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for,~~ **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs**

under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]

a. procurement contracts for:

a. ~~(i)~~ renewable energy generation or capacity,

b. ~~(ii)~~ conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. ~~(iii)~~ energy efficiency,

d. ~~(iv)~~ natural gas generation and capacity, excluding ~~contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other~~such contracts as may be prescribed, or **[NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. ~~(v)~~ payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means ~~the IESO,~~ a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the ~~determination of the~~ rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, ~~which entitles~~and, in the case of a transfer of an interest in an investment asset ~~owner to~~ , the rights and benefits specified in the agreement under which the ~~ownership~~interest in the investment interest is transferred;

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[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the ~~IESO funding shortfall~~amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means ~~an~~(i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale~~; ("French")~~ thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]**

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

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i. a dwelling,

ii. a property within the meaning of the *Condominium Act, 1998*,

iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

   v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in~~

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~~the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of~~; or **[NTD: the clean energy adjustment** ~~over other debts; or~~**is allocated and collected rateably]**

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[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), ~~[~~to more fairly ~~measure~~recognize clean energy benefits and allocate the clean energy costs ~~and clean energy benefits~~ among present and future

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generations of specified consumers,~~]~~ the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with ~~such~~the terms of payment ~~as may be~~ specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any

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other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. ~~Calculate~~The Financial Services Manager shall estimate the ~~estimated~~ finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. ~~Add~~ The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method~~, to~~. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount ~~calculated under paragraph 1.~~and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(~~2~~3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account ~~historical and reasonably foreseeable~~,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, ~~and~~

   ii. aggregate variations in billings due to variations in electricity consumption~~.~~, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to ~~issue remittance notice to electricity vendors~~receive

~~11xx.~~ ~~(1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~IESO to collect~~

(2) The IESO shall, as an agent of the investment asset owners, ~~collect~~ receive the clean energy adjustment ~~from~~paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.]**

[NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].

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Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of ~~collecting~~receiving those ~~accounts~~amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners ~~or a secured party to whom a~~**. [NTD: see sections with security interest** ~~in an investment interest is granted under this Act.~~**language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer~~'s amount~~ in respect of the clean energy adjustment ~~in accordance with the regulations~~, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(~~2~~3) Each electricity vendor shall, as an agent of ~~the IESO and~~ the investment asset owners, collect the clean energy adjustment ~~from~~paid by specified consumers [in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~ regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners ~~or secured parties~~ in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made for the purposes of this Act~~.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences ~~and transfers~~ should be implemented in a manner that~~, as~~ the Financial Services Manager considers to be reasonable, ~~is~~to be cost effective and ~~reflects~~to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If ~~a~~any transfer ~~under this Part~~ provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3.Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month ~~in the following manner~~shall be equal to A – B + C where:

1. ~~Calculate~~ A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. ~~Calculate~~ B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

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~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account

20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers~~,~~ or an error in the information provided by an electricity vendor, the IESO shall record ~~an adjustment~~ in the variance account ~~in the following month~~an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same

(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

~~**Recording of IESO funding shortfall**~~

Same

(~~3~~4) IESO shall record in the variance account all payments received by the IESO ~~funding shortfall from time to time, including adjustments~~ resulting from ~~the exercise of~~

the right of recovery under section 21 ~~and~~or any transfer under section ~~22, in the variance account.~~22.

Recording determinative

(~~4~~5) ~~A~~Each recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account is determinative ~~of the amount of IESO funding shortfall~~as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner

(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) ~~The~~ IESO has the right, exercisable in accordance with this Act and the regulations, to recover ~~the IESO funding shortfall~~from specified consumers the balance from time to time recorded in the variance accounts.

Same~~, restrictions~~

(2) The ~~IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:~~Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

~~1. The~~ (3) IESO shall not be entitled to collect ~~the IESO funding shortfall~~all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity ~~under~~. **[NTD: not necessary and unhelpful to refer to the Financing Plan~~, which transfer creates the investment asset~~ in relation to transfers]**.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~, (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account;~~ of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and ~~(b) unless otherwise provided for in this Act, the IESO~~ shall have no ~~further~~ right, title or interest in~~, or any obligations in respect of, the regulatory asset or in the~~ any investment asset ~~created by the transfer.~~arising under this Act.

~~**Same**~~

Vesting, deemed Perfection

(3) Each ~~Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.~~ **~~Validity~~**transfer of ~~**transfer**~~

~~**23xx.** (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.~~

~~**Same**~~

~~(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.~~

~~**Deemed perfection, etc.**~~ ~~(3) At the time a transfer of a regulatory asset is made, the transfer~~a regulatory asset shall be deemed to have been and shall be perfected~~,~~ and vested~~, valid and binding~~ as against ~~the transferor~~IESO and all other persons who have claims of any kind against IESO or the ~~transferor~~regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer ~~and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons~~or have registered or otherwise perfected their interest.

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PART VI
THE INVESTMENT ASSET

~~Interpretation, investment~~Investment asset

~~**24xx.**~~

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest.

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

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6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including, (a)~~ by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province~~;~~

~~(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or (c)~~ or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.
[Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the

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investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to

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the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

~~**Conflict**~~

~~**33xx.** The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.~~ **[NTD: the earlier provisions provided that the PPSA does apply]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding ~~for damages~~ shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

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undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, ~~2017,~~2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] Note - see s. 51 of the Electricity Act, 1998

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. ~~(iv)~~ incurring liabilities in relation to the regulatory asset;

b. ~~(v)~~ transferring the regulatory asset for consideration;

c. ~~(vi)~~ acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

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6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

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[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated finance~~Finance amount

1. The ~~estimated~~ finance amount for a reference period shall be ~~determined by estimating, prior to the start of a reference period,~~ the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Moved from	4
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Style change	0
Format changed	0
Total changes	327

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
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Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their co

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From: Peter Hamilton [PHamilton@stikeman.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 09:46:11
Attachment 1: SETOR1-#6712816-v4-Fair_Hydro_Act.docx
Attachment 2: WSComparison__6712834_1-_6712816_4.pdf

Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their comments especially around the requirements to be met in order to recognize and de-recognize the regulatory asset.

While not reflected in our mark-up, we think that Part III with respect to the billing and collection of the Clean Energy Adjustment would benefit from a reorganization. First, it might be moved later in the statute, after both Part V with respect to the Regulatory Asset and Part VI with respect to the Investment Asset. Its current placement suggests that it is relevant to both the regulatory asset and the investment asset , which is not the case. Second it might be internally reorganized so that it deals sequentially with the following subjects:

1. Determination of the amount of the Clean Energy Adjustment, which in our view should be done by the Financial Services Manager (currently in Sections 10(1) and 10(3).

2. Determination by the OEB of the rate necessary to recover the Clean Energy Adjustment (currently in Section 10(2)). It is not clear to us that there is a role for the IESO in between the OEB and the electricity vendors, but happy to discuss.

3. Obligation of electricity vendors to invoice (Section 12)

4. Obligation of consumers to pay invoice amount (Section 8)

5. Obligation of electricity vendors to collect and remit (Section 12(2) to 12(6)). We need to provide for the collection standard and in particular make clear that they do not guarantee collection from customers.

6. Obligation of IESO to collect and remit (Sections 11(2) to 11(5). We need to provide for the collection standard and in particular make clear that we do not guarantee performance by the electricity vendors.

Peter

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Thursday, April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; 'Emes, Aaron'; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com);

Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our

thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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SETOR1-#6712816-v4-Fair_Hydro_Act.pdf

Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

---

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid by the IESO referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]**

a. procurement contracts for:

a. renewable energy generation or capacity,

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b. conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. energy efficiency,

d. natural gas generation and capacity, excluding such contracts as may be prescribed, or [**NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")
[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

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"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment**

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Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment; or **[NTD: the clean energy adjustment is allocated and collected rateably]**

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

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"average baseline invoice amount" means the monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), to more fairly recognize clean energy benefits and allocate the clean energy costs among present and future generations of specified consumers, the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with the terms of payment specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

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(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. The Financial Services Manager shall estimate the finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method. **[NTD: the true up amount may be either positive or negative.]**

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3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs,

   ii. aggregate variations in billings due to variations in electricity consumption, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to receive

(2) The IESO shall, as an agent of the investment asset owners, receive the clean energy adjustment paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of

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the *Electricity Act, 1998]*. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.] [NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].**

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners. **[NTD: see sections with security interest language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer in respect of the clean energy adjustment, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(3)Each electricity vendor shall, as an agent of the investment asset owners, collect the clean energy adjustment paid by specified consumers [in accordance with the regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred .

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

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[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account
20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same
(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record in the variance account an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same
(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

Same
(4) IESO shall record in the variance account all payments received by the IESO resulting from the right of recovery under section 21 or any transfer under section 22.

Recording determinative
(5) Each recording by the IESO in the variance account is determinative as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner
(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established
21xx. (1) IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance accounts.

Same

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

(3) IESO shall not be entitled to collect all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity. **[NTD: not necessary and unhelpful to refer to the Financing Plan in relation to transfers]**.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

Vesting, deemed Perfection

(3) Each transfer of a regulatory asset shall be deemed to have been and shall be perfected and vested as against IESO and all other persons who have claims of any kind against IESO or the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer or have registered or otherwise perfected their interest.

PART VI
THE INVESTMENT ASSET

Investment asset

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest**.**

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(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

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[NTD: the earlier provisions provided that the PPSA does apply]

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

[7] Note - see s. 51 of the Electricity Act, 1998

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(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. incurring liabilities in relation to the regulatory asset

b. transferring the regulatory asset for consideration;

c. acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

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Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
FINANCE AMOUNT

Finance amount

1. The finance amount for a reference period shall be the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Version 3 [IESO comments]

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities ~~in the Province~~ for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

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The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid by the IESO ~~under~~referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for,~~ **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs**

under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]

a. procurement contracts for:

a. ~~(i)~~ renewable energy generation or capacity,

b. ~~(ii)~~ conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. ~~(iii)~~ energy efficiency,

d. ~~(iv)~~ natural gas generation and capacity, excluding ~~contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other~~such contracts as may be prescribed, or **[NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. ~~(v)~~ payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means ~~the IESO,~~ a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the ~~determination of the~~ rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, ~~which entitles~~and, in the case of a transfer of an interest in an investment asset ~~owner to~~ , the rights and benefits specified in the agreement under which the ~~ownership~~interest in the investment interest is transferred;

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[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the ~~IESO funding shortfall~~amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means ~~an~~(i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale~~; ("French")~~ thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]**

"variance account" means the variance account established under section 20.1xx.

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

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i. a dwelling,

ii. a property within the meaning of the *Condominium Act, 1998*,

iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

   iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

   v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in~~

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~~the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of~~; or **[NTD: the clean energy adjustment** ~~over other debts; or~~**is allocated and collected rateably]**

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[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), ~~[~~to more fairly ~~measure~~recognize clean energy benefits and allocate the clean energy costs ~~and clean energy benefits~~ among present and future

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generations of specified consumers,~~]~~ the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

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Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with ~~such~~the terms of payment ~~as may be~~ specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any

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other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. ~~Calculate~~The Financial Services Manager shall estimate the ~~estimated~~ finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. ~~Add~~ The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method~~, to~~. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount ~~calculated under paragraph 1.~~and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(~~2~~3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account ~~historical and reasonably foreseeable~~,

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, ~~and~~

   ii. aggregate variations in billings due to variations in electricity consumption~~.~~, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to ~~issue remittance notice to electricity vendors~~receive

~~11xx.~~ ~~(1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~IESO to collect~~

(2) The IESO shall, as an agent of the investment asset owners, ~~collect~~ receive the clean energy adjustment ~~from~~paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.]**

[NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].

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Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of ~~collecting~~receiving those ~~accounts~~amounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners ~~or a secured party to whom a~~**. [NTD: see sections with security interest** ~~in an investment interest is granted under this Act.~~**language.]**

IESO to remit

(5) The IESO shall remit the amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer~~'s amount~~ in respect of the clean energy adjustment ~~in accordance with the regulations~~, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(~~2~~3) Each electricity vendor shall, as an agent of ~~the IESO and~~ the investment asset owners, collect the clean energy adjustment ~~from~~paid by specified consumers [in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~ regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners ~~or secured parties~~ in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made for the purposes of this Act~~.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences ~~and transfers~~ should be implemented in a manner that~~, as~~ the Financial Services Manager considers to be reasonable, ~~is~~to be cost effective and ~~reflects~~to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If ~~a~~any transfer ~~under this Part~~ provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3.Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month ~~in the following manner~~shall be equal to A – B + C where:

1. ~~Calculate~~ A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. ~~Calculate~~ B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

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~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account

20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers~~,~~ or an error in the information provided by an electricity vendor, the IESO shall record ~~an adjustment~~ in the variance account ~~in the following month~~an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same

(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

~~**Recording of IESO funding shortfall**~~

Same

(~~3~~4) IESO shall record in the variance account all payments received by the IESO ~~funding shortfall from time to time, including adjustments~~ resulting from ~~the exercise of~~

the right of recovery under section 21 ~~and~~or any transfer under section ~~22, in the variance account.~~22.

Recording determinative

(~~4~~5) ~~A~~Each recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account is determinative ~~of the amount of IESO funding shortfall~~as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner

(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

21xx. (1) ~~The~~ IESO has the right, exercisable in accordance with this Act and the regulations, to recover ~~the IESO funding shortfall~~from specified consumers the balance from time to time recorded in the variance accounts.

Same~~, restrictions~~

(2) The ~~IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:~~Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

~~1. The~~ (3) IESO shall not be entitled to collect ~~the IESO funding shortfall~~all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity ~~under~~. **[NTD: not necessary and unhelpful to refer to the Financing Plan~~, which transfer creates the investment asset~~ in relation to transfers]**.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~, (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account;~~ of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and ~~(b) unless otherwise provided for in this Act, the IESO~~ shall have no ~~further~~ right, title or interest in~~, or any obligations in respect of, the regulatory asset or in the~~ any investment asset ~~created by the transfer.~~arising under this Act.

~~**Same**~~

Vesting, deemed Perfection

(3) Each ~~Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.~~ **~~Validity~~**transfer of ~~**transfer**~~

~~**23xx.** (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.~~

~~**Same**~~

~~(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.~~

~~**Deemed perfection, etc.**~~ ~~(3) At the time a transfer of a regulatory asset is made, the transfer~~a regulatory asset shall be deemed to have been and shall be perfected~~,~~ and vested~~, valid and binding~~ as against ~~the transferor~~IESO and all other persons who have claims of any kind against IESO or the ~~transferor~~regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer ~~and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons~~or have registered or otherwise perfected their interest.

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PART VI
THE INVESTMENT ASSET

~~Interpretation, investment~~Investment asset

~~**24xx.**~~

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest.

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

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6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including, (a)~~ by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province~~;~~

~~(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or (c)~~ or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms.
[Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the

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investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to

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the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

~~**Conflict**~~

~~**33xx.** The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.~~ **[NTD: the earlier provisions provided that the PPSA does apply]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding ~~for damages~~ shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

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undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, ~~2017,~~2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] Note - see s. 51 of the Electricity Act, 1998

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. ~~(iv)~~ incurring liabilities in relation to the regulatory asset;

b. ~~(v)~~ transferring the regulatory asset for consideration;

c. ~~(vi)~~ acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

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6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

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[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated finance~~Finance amount

1. The ~~estimated~~ finance amount for a reference period shall be ~~determined by estimating, prior to the start of a reference period,~~ the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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	Count
Insertions	157
Deletions	162
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	327

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Monday, April 17, 2017 12:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Persaud, Donnie - Debt Capital Markets'; Hill, Krista; 'Turnbull, Vickie'; 'Dal Bello, David'; Mansoori, Nina; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; Emes, Aaron; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Myers, Jonathan; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Feldman, Michael
Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

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RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Monday, April 17, 2017 12:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Persaud, Donnie - Debt Capital Markets'; Hill, Krista; 'Turnbull, Vickie'; 'Dal Bello, David'; Mansoori, Nina; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; Emes, Aaron; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Myers, Jonathan; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Feldman, Michael
Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce
Attachments:
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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
Attachment 1: image9b9365.JPG
Attachment 2: New Sections.DOCX

All,

In case it is helpful for this afternoon's meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Feldman, Michael <mfeldman@torys.com>
Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a

view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset

(although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the

investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>;

maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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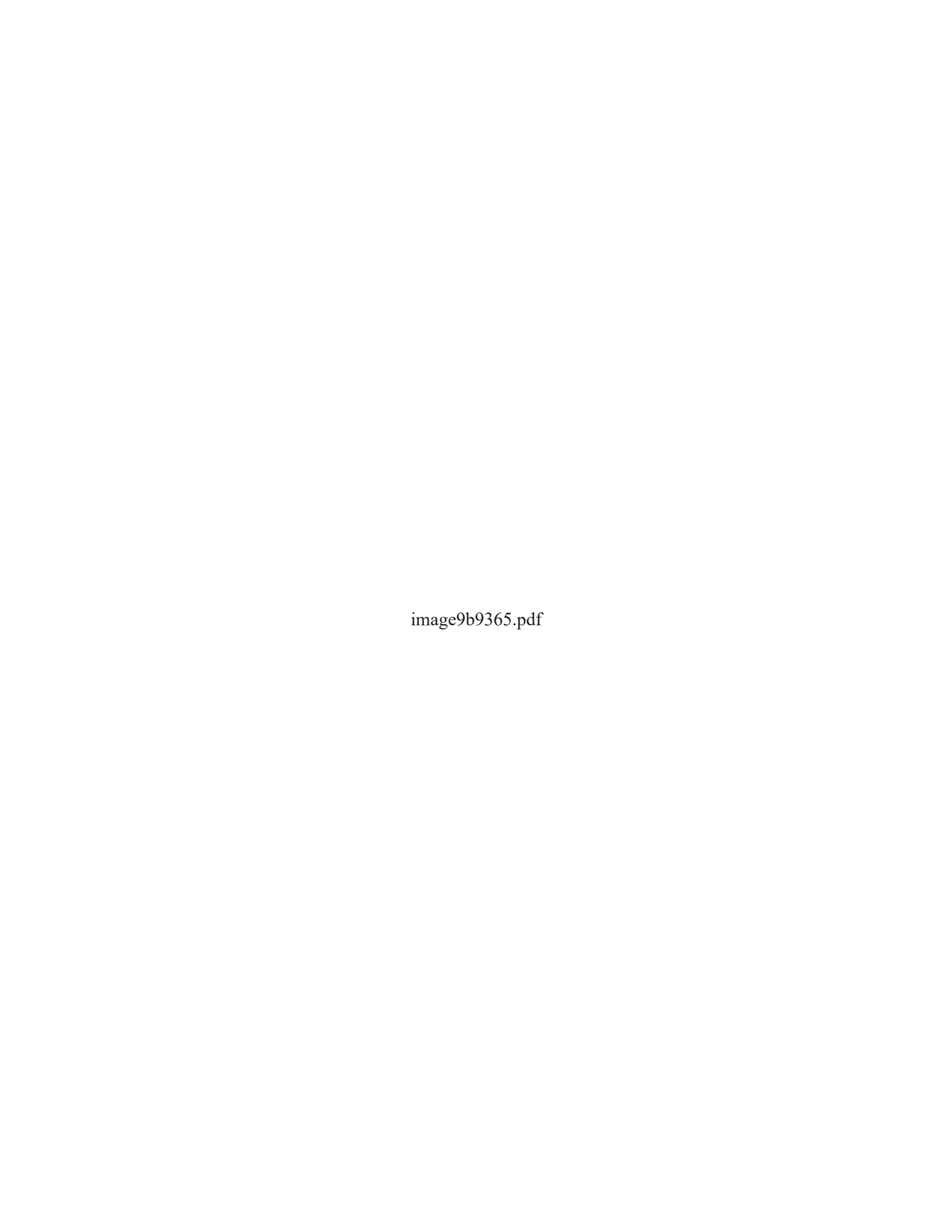
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TORYS
LLP

New Sections.pdf

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Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas of concern we have also provided suggested revised drafting on the attached. Briefly, the pricing for RPP consumers for 2017/2018 as written appears to us to "over-smooth", and the pricing for non-RPP consumers - which by its terms appeared to us to be having the OEB set commodity prices for these consumers - is not what we understand the policy intention to be.

We have also proposed two new sections that we believe are necessary in order for the OEB to appropriately carry out its responsibilities under this legislation, as well as two new consequential amendments to the OEB Act. These are towards the back end of the document.

Martine

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and

Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA);

Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4: OEB COMMENTS

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

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(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in section~~s~~ 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? .Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and ***[OEB Note to Draft: It is not known whether LDCs can***

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~**Sub-meter customers**~~

~~**7.1xx** A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

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Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

~~**Recovery from sub-meter consumers**~~

~~(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. ***[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]***

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. ***[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,***

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement. ***[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]***

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

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(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: @

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas o

Attachments:
OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx (154 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855684~201704270316140000~Z~D1369F2E9ACE38FEF8EDCFC3106E4C01&AttachmentId=1OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017)

Consultation v4.docx

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:53:56

Thanks. Your email came in through my home address just as our OEB email started working again.

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY);

Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com);

LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: @

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas o

Attachments:
OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx (154 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=20170530617542 8~20170427031614 0000~Z~D0A1FFD406B5DCC67F943F1186232E31&AttachmentId=1OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017)

Consultation v4.docx

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

---

Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas of concern we have also provided suggested revised drafting on the attached. Briefly, the pricing for RPP consumers for 2017/2018 as written appears to us to "over-smooth", and the pricing for non-RPP consumers - which by its terms appeared to us to be having the OEB set commodity prices for these consumers - is not what we understand the policy intention to be.

We have also proposed two new sections that we believe are necessary in order for the OEB to appropriately carry out its responsibilities under this legislation, as well as two new consequential amendments to the OEB Act. These are towards the back end of the document.

Martine

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and

Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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56 Wellesley Street West, 18th Floor.

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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56 Wellesley Street West, 18th Floor.

Toronto

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA);

Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4: OEB COMMENTS

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

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(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in section~~s~~ 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? .Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and ***[OEB Note to Draft: It is not known whether LDCs can***

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~**Sub-meter customers**~~

~~**7.1xx** A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

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Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

~~**Recovery from sub-meter consumers**~~

~~(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. ***[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]***

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. ***[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,***

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement. ***[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]***

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

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(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas of concern we have also provided suggested revised drafting on the attached. Briefly, the pricing for RPP consumers for 2017/2018 as written appears to us to "over-smooth", and the pricing for non-RPP consumers - which by its terms appeared to us to be having the OEB set commodity prices for these consumers - is not what we understand the policy intention to be.

We have also proposed two new sections that we believe are necessary in order for the OEB to appropriately carry out its responsibilities under this legislation, as well as two new consequential amendments to the OEB Act. These are towards the back end of the document.

Martine

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and

Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA);

Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4: OEB COMMENTS

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

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(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in section~~s~~ 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? .Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and ***[OEB Note to Draft: It is not known whether LDCs can***

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~**Sub-meter customers**~~

~~**7.1xx** A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

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Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

~~**Recovery from sub-meter consumers**~~

~~(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. ***[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]***

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. ***[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,***

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement. ***[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]***

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

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(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas o

Attachments:
OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx (154 KB)
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From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
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Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416

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From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
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Thanks. Your email came in through my home address just as our OEB email started working again.

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY);

Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com);

LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)

Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

Toronto

M7A 2E7

(416) 212-4867

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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RE_ OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted)
Date: Wednesday, April 12, 2017 13:51:06
Attachment 1: @

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1EEEF680A99D8E343A06483EE3F9C2E0A1110000ctsbigdcapmvs01&SavesetId=201706308855577~20170412175107000~Z~D12DAE8F0DC7132AD873F77D98292F61
View the original item

Hi Suzie.

Thanks for your feedback on the draft doc. I’m back on line now and I know that Cindy is on her way to the meeting location. I have inserted comments for your consideration, in response

Attachments:

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RE_ OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted)
Date: Wednesday, April 12, 2017 13:51:06
Attachment 1: image001.gif
Attachment 2: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act_ np to ey.docx

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Hi Suzie.

Thanks for your feedback on the draft doc. I'm back on line now and I know that Cindy is on her way to the meeting location. I have inserted comments for your consideration, in response to your observations. Please note that Cindy has not had a chance to review these. Nadine

Cindy – please see A11 and A15 in particular. Good to know that OFA will be participating in today's call as they need to be aware of contingency related discussions. I had requested in Monday's meeting that the contingencies be documented so that they can be considered by both OPCD and OPG in the 'control' analysis. I haven't heard if and when we might expect to receive those details. Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April-12-17 12:50 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act_ (2).DOCX

Hi Cindy/Nadine:

Attached are our comments. We haven't been able to do a deep dive into any of the issues given the timelines and limited info but we have identified risk areas and some points for clarification to help us better understand the proposed structure.

At a high level, we don't see any new issues or obvious items in the legislation where

the wording elevates a previously identified risk. We generally feel that the memos supporting control by OPG and the related consolidation as well as the existence and recognition of the regulated asset are the most significant issues at the moment.

I am able to join the call 2-5 and Lee Anne will join 2-3.

Please let us know if you'd like to discuss any of our comments before the call.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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Comment Draft: April 10, 2017

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Commented [A1]: My notes from the last call indicate that OPG and TBS were going to create a document with the issues they foresee – is that available to us?

OPCD – To clarify, OPG and IESO have been leading on identifying any potential issues from their respective viewpoints. The revised drafts have attempted to address the issues on an on-going basis. OPG and IESO (and their advisors are expected to participate on today's call and comment on any outstanding issues).

Commented [A2]: My notes also indicate that Cindy had asked to walk through the debits and the credits – can we get that to better understand the proposed structure and entries? OPCD- an update to the model and walkthrough has been initiated, based on the current assumptions.

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Commented [A3]:
Risk #1 – based on earlier discussions, concern that this cannot be recognized under the IESO accounting framework. (OPCD – IESO accounting under PSAB, being addressed)

Risk #2 – risk that this does not meet definition of an RRA – need to see KPMG paper to analyse (KPMG paper is a WIP, to be based on model specifics.)

Risk #3 - Even if considered an RRA and recognized, risk is that AG feels it does not meet definition or is not recognizable which could result in elimination of the asset in consolidated entity (OPCD – expect that remaining balance on IESO books at year-end would be immaterial)

Risk #4 – if any asset left in IESO at any date, risk that AG does not agree that it is recognizable under PSAB. OPCD --- desirable to defend recognition on Province's books under PSAB (E&Y input requested)

Commented [A4]: To confirm understanding
Financing entity – the Trust
Financial Services Agent - OPG
Absolute Assignee – the Trust (OPCD – Expect Energy to clarify on call)

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

Commented [A5]: Risk - what are the terms and conditions that allow for control/consolidation of the Trust in OPG? Need the financing plan and terms of the Trust to understand the relationship and risk to Province that it could be seen to control. To be confirmed in OPG paper. (OPG addressing risk of provincial control – paper to follow from OPG)

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

Commented [A6]: Is this an asset on day 1 related to past amounts charged through that will now be rebated? How does this RRA get created? Is OEB involved in setting future rates for past costs that were already recovered in past rates? We'll these somehow go back to the ratepayer? This will need to be supported in the KPMG paper. (OPCD – no rebates envisioned. See remaining sections for further details on RRA)

Commented [A7]:
Risk #1 – based on earlier discussions, concern that this cannot be recognized under the IESO accounting framework. (OPCD – IESO and KPMG addressing)

Risk #2 – risk that this does not meet definition of an RRA – need to see KPMG paper to analyse (OPCD – as above)
Risk #3 - Even if considered an RRA and recognized, risk is that AG feels it does not meet definition or is not recognizable which could result in elimination of the asset in consolidated entity(OPCD – see earlier comments)

Risk #4 – if any asset left in IESO at any date, risk that AG does not agree that it is recognizable under PSAB (OPCD – see above)

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

Commented [A8]: To clarify – is it an RRA or intangible asset that will be on the SPVs books as the assignee? To be clarified in OPG paper. (OPCD – OPG Trust to recognize an intangible asset)

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

Commented [A9]: Consider:
-Is this plus other info below on RRA sufficient to create the RRA based on accounting definition of such an asset (under those frameworks that have specific guidance on RRAs such as US GAAP) – KPMG paper will need to support (OPCD – awaiting KPMG paper)

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

Commented [A10]: Consider:
See above. Is this sufficient to create the RRA based on accounting definition of such an asset (under those frameworks that have specific guidance on RRAs such as US GAAP). Need to be addressed by KPMG. (OPCD – please see IESO submissions attached to CAB documents which addressed accounting for the RRA. Feedback/comments would be appreciated)

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

Commented [A11]: Confirm that future fair share of green transition benefits relates to past costs not to future costs related to the program. If future costs, question existence of current period RRA. (OPCD – wording to be reviewed. Intent is to capture 'delta' between IESO cost and LDC cost recovery for purposes of future recovery, and that such capture will happen in regards to current and future costs.)

18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

Commented [A12]: See comment above - does this create an RRA for IESO and is that supportable? How is OEB involved? KPMG paper will need to support. (OPCD – please see comment above – feedback on paper included with CAB submission would be appreciated.)

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

Commented [A13]: Comment - keep at OPG level to maintain the control at that level (OPCD – the plan is for OPG to develop)

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative
Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

Commented [A14]: Risk – need to consider what could happen that could result in Province being seen to control

-Need to see the control argument to see if any possible issues – OPG memo
-Could Province setting parameters/principles have impact - this seems generic enough that would not cause an issue
(OPCD – intent is that these are just 'principles' that should be considered in developing the FP (not mandatory, but language likely still needs some work)

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

Commented [A15]: Risk – can't get sufficient funding through external markets – where do RRAs sit? How does IESO get its funding? Impact on control and consolidation. (OPCD – discussions have included contingencies involving OFA. OPCD requested contingencies be documented for consideration from a control perspective)

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

RE_ OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act (npp comments inserted)
Date: Wednesday, April 12, 2017 13:51:06
Attachment 1: image001.gif
Attachment 2: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act_ np to ey.docx

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Hi Suzie.

Thanks for your feedback on the draft doc. I'm back on line now and I know that Cindy is on her way to the meeting location. I have inserted comments for your consideration, in response to your observations. Please note that Cindy has not had a chance to review these. Nadine

Cindy – please see A11 and A15 in particular. Good to know that OFA will be participating in today's call as they need to be aware of contingency related discussions. I had requested in Monday's meeting that the contingencies be documented so that they can be considered by both OPCD and OPG in the 'control' analysis. I haven't heard if and when we might expect to receive those details. Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April-12-17 12:50 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: OTS TOR_2528-#23107566-v9-_Fair_Hydro_Act_ (2).DOCX

Hi Cindy/Nadine:

Attached are our comments. We haven't been able to do a deep dive into any of the issues given the timelines and limited info but we have identified risk areas and some points for clarification to help us better understand the proposed structure.

At a high level, we don't see any new issues or obvious items in the legislation where

the wording elevates a previously identified risk. We generally feel that the memos supporting control by OPG and the related consolidation as well as the existence and recognition of the regulated asset are the most significant issues at the moment.

I am able to join the call 2-5 and Lee Anne will join 2-3.

Please let us know if you'd like to discuss any of our comments before the call.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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Comment Draft: April 10, 2017

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Commented [A1]: My notes from the last call indicate that OPG and TBS were going to create a document with the issues they foresee – is that available to us?

OPCD – To clarify, OPG and IESO have been leading on identifying any potential issues from their respective viewpoints. The revised drafts have attempted to address the issues on an on-going basis. OPG and IESO (and their advisors are expected to participate on today's call and comment on any outstanding issues).

Commented [A2]: My notes also indicate that Cindy had asked to walk through the debits and the credits – can we get that to better understand the proposed structure and entries? OPCD- an update to the model and walkthrough has been initiated, based on the current assumptions.

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Commented [A3]:
Risk #1 – based on earlier discussions, concern that this cannot be recognized under the IESO accounting framework. (OPCD – IESO accounting under PSAB, being addressed)

Risk #2 – risk that this does not meet definition of an RRA – need to see KPMG paper to analyse (KPMG paper is a WIP, to be based on model specifics.)

Risk #3 - Even if considered an RRA and recognized, risk is that AG feels it does not meet definition or is not recognizable which could result in elimination of the asset in consolidated entity (OPCD – expect that remaining balance on IESO books at year-end would be immaterial)

Risk #4 – if any asset left in IESO at any date, risk that AG does not agree that it is recognizable under PSAB. OPCD --- desirable to defend recognition on Province's books under PSAB (E&Y input requested)

Commented [A4]: To confirm understanding
Financing entity – the Trust
Financial Services Agent - OPG
Absolute Assignee – the Trust (OPCD – Expect Energy to clarify on call)

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

Commented [A5]: Risk - what are the terms and conditions that allow for control/consolidation of the Trust in OPG? Need the financing plan and terms of the Trust to understand the relationship and risk to Province that it could be seen to control. To be confirmed in OPG paper. (OPG addressing risk of provincial control – paper to follow from OPG)

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

---

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

Commented [A6]: Is this an asset on day 1 related to past amounts charged through that will now be rebated? How does this RRA get created? Is OEB involved in setting future rates for past costs that were already recovered in past rates? We'll these somehow go back to the ratepayer? This will need to be supported in the KPMG paper. (OPCD – no rebates envisioned. See remaining sections for further details on RRA)

Commented [A7]:
Risk #1 – based on earlier discussions, concern that this cannot be recognized under the IESO accounting framework. (OPCD – IESO and KPMG addressing)

Risk #2 – risk that this does not meet definition of an RRA – need to see KPMG paper to analyse (OPCD – as above)
Risk #3 - Even if considered an RRA and recognized, risk is that AG feels it does not meet definition or is not recognizable which could result in elimination of the asset in consolidated entity(OPCD – see earlier comments)

Risk #4 – if any asset left in IESO at any date, risk that AG does not agree that it is recognizable under PSAB (OPCD – see above)

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

Commented [A8]: To clarify – is it an RRA or intangible asset that will be on the SPVs books as the assignee? To be clarified in OPG paper. (OPCD – OPG Trust to recognize an intangible asset)

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

Commented [A9]: Consider:
-Is this plus other info below on RRA sufficient to create the RRA based on accounting definition of such an asset (under those frameworks that have specific guidance on RRAs such as US GAAP) – KPMG paper will need to support (OPCD – awaiting KPMG paper)

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

Commented [A10]: Consider:
See above. Is this sufficient to create the RRA based on accounting definition of such an asset (under those frameworks that have specific guidance on RRAs such as US GAAP). Need to be addressed by KPMG. (OPCD – please see IESO submissions attached to CAB documents which addressed accounting for the RRA. Feedback/comments would be appreciated)

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

Commented [A11]: Confirm that future fair share of green transition benefits relates to past costs not to future costs related to the program. If future costs, question existence of current period RRA. (OPCD – wording to be reviewed. Intent is to capture 'delta' between IESO cost and LDC cost recovery for purposes of future recovery, and that such capture will happen in regards to current and future costs.)

18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

Commented [A12]: See comment above - does this create an RRA for IESO and is that supportable? How is OEB involved? KPMG paper will need to support. (OPCD – please see comment above – feedback on paper included with CAB submission would be appreciated.)

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

Commented [A13]: Comment - keep at OPG level to maintain the control at that level (OPCD – the plan is for OPG to develop)

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative
Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

Commented [A14]: Risk – need to consider what could happen that could result in Province being seen to control

-Need to see the control argument to see if any possible issues – OPG memo
-Could Province setting parameters/principles have impact - this seems generic enough that would not cause an issue
(OPCD – intent is that these are just 'principles' that should be considered in developing the FP (not mandatory, but language likely still needs some work)

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

Commented [A15]: Risk – can't get sufficient funding through external markets – where do RRAs sit? How does IESO get its funding? Impact on control and consolidation. (OPCD – discussions have included contingencies involving OFA. OPCD requested contingencies be documented for consideration from a control perspective)

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

RE_ OTS call - Nadine_LeeAnne_Suzie.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: OTS call - Nadine/LeeAnne/Suzie
Date: Thursday, February 09, 2017 18:06:57

Hi Ladies. Can we please change this to 11 am and include Cindy on the invite. Thanks for your flexibility. Thanks. Nadine

-----Original Appointment-----
From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: February 9, 2017 5:06 PM
To: Suzie Gignac; Petsche, Nadine (TBS); Lee Anne Probert
Subject: OTS call - Nadine/LeeAnne/Suzie
When: February 10, 2017 10:30 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: See details below

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Passcode 6995628040

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Subject: OTS call - Nadine/LeeAnne/Suzie
When: February 10, 2017 10:30 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: See details below

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Passcode 6995628040

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RE_ OTS call - Nadine_LeeAnne_Suzie.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: OTS call - Nadine/LeeAnne/Suzie
Date: Thursday, February 09, 2017 22:13:30

Hi Nadine,

I went back to the Basis for Conclusion for IFRS 14 and found the following:

BC15 The IASB acknowledges the difficult practice problems related to this issue. The IASB has, therefore, decided to issue this Standard, which allows entities that currently recognise regulatory deferral account balances in accordance with their previous GAAP to continue to do so when making the transition to IFRS. In accordance with paragraph 5, an entity is only eligible to apply this Standard if it:

(a) is subject to oversight and/or approval from an authorised body (the rate regulator);

(b) recognised regulatory deferral account balances in its financial statements in accordance with its previous GAAP; and

(c) elected to apply the requirements of this Standard in its first IFRS financial statements.

BC16 Consequently, an entity that does not recognise regulatory deferral account balances in accordance with its previous GAAP in the period immediately preceding its first IFRS financial statements is not eligible to apply this Standard in order to start recognising such balances. An entity would not, therefore, be eligible if, for example:

(a) the entity did not have any relevant rate-regulated activities in the period before it made the transition to IFRS but then acquires or commences rate-regulated activities after the date that it adopts IFRS; or

(b) the entity is a newly formed business and adopts IFRS in its first IFRS financial statements.

So even if the government's newly formed entity is registered with the SEC and prepares its standalone statements in accordance with US GAAP, I don't think it will be eligible to use IFRS 14 because it will be adopting IFRS for government reporting purposes at the same time it begins reporting under US GAAP (inception).

Please let me know your thoughts.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

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RE_ Please confirm.rtf

From: Betik, Matthew [mbetik@kpmg.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; Picard, Michel [mpicard@kpmg.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Please confirm
Date: Friday, May 26, 2017 07:10:34

I see no errors in this information. I can't speak to the timing of communication between Kim and Bonnie/Bill because I simply don't know those dates.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 5:09 PM
To: Susan Nicholson <susan.nicholson@ieso.ca>; Picard, Michel <mpicard@kpmg.ca>; Betik, Matthew <mbetik@kpmg.ca>
Cc: Nadine.Petsche@ontario.ca
Subject: RE: Please confirm

Here are some dates to add….

Approx. March Fri the 24th or Mon the 27th - I contact Bonnie's ofc and leave a vm

Thurs March 30th - Bill Pelow reaches out to Matt to review

Tues April 4th – Kim leaves vm for Bill Pelow

Friday april 7th – Bill Pelow returns my call

April 20 – Bill Pelow emails asking for meeting with IESO and KPMG

April 24 – IESO and KPMG meetings with auditor general office

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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From: Susan Nicholson
Sent: May 25, 2017 4:10 PM
To: Kim Marshall; mpicard@kpmg.ca; mbetik@kpmg.ca
Cc: Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FW: Please confirm

As discussed, Kim will add some other key dates.

Thanks. Susan

From: Susan Nicholson
Sent: May 09, 2017 9:59 AM
To: Nadine.Petsche@ontario.ca
Cc: Kim Marshall; Susan Nicholson
Subject: FW: Please confirm

Nadine - timing of the events surrounding the approval of the audited IESO financial statements was as follows:

· February 28 – in accordance with the audit committee calendar, KPMG and management presented financial statements prior to accounting policy changes to the Audit Committee for information purposes. Management and KPMG discussed the proposed accounting policy changes with the objective of bringing policies and revised

financial statements back to the Audit Committee in March.

· March 1 – the Board delegated authority to the Audit Committee to review the accounting policy changes, adjust financial statements for the changes and approve on behalf of the Board

· March 15 – KPMG and management presented the accounting policy changes for rate regulated assets and market accounts to the Audit Committee at a special meeting. The presentation of materials included a memo from KPMG on the accounting policies as well as pro forma financial statements and proposed changes to the notes of the financial statements

· March 22 – KPMG and management presented the audited financial statements to the Audits Committee for approval based on the delegated authority of Board from March 1st. The financial statements were approved on March 22nd.

Nadine, happy to have a discussion

Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Begin forwarded message:

From: "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
Date: May 8, 2017 at 5:08:55 PM EDT
To: "Kim Marshall (Kim.Marshall@ieso.ca)" <Kim.Marshall@ieso.ca>
Subject: Please confirm

Hi Kim.

Cindy has asked that I follow up regarding a comment made by the AG in a meeting last week. With regards to the IESO's recent decision to adopt rate regulated accounting, the AG said that a set of IESO f/s had presented to the IESO Board on March 21st which did not reflect rate regulated accounting even though IESO management and the external auditors would have known about the impending accounting and the anticipated adoption of rate regulated accounting to follow shortly thereafter.

Can you please confirm the accuracy of the AG's statement.

Thanks in advance.

Nadine

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RE_ Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm).rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Picard, Michel [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: Tuesday, May 16, 2017 15:18:26

Any chance for a morning meeting?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 2:43 PM

To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Thanks Michel.

I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?

Thanks again.

Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Hi Nadine,

I have availability to attend a meeting after 2pm tomorrow. It should not be a call. However, I am required to obtain authorization from our risk management department. Assuming they accept, we will need, as a minimum, to obtain from IESO a consent, release and indemnity letter.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Kim/Michel,

I understand that a call/meeting is being contemplated for tomorrow afternoon with staff from the FAO to discuss accounting for the FHP. The primary purpose for the meeting is to help the FAO staff to better understand the accounting elements of the GA Refinancing structure to help them as they finalize a report on the topic.

I have been asked to confirm your availability for a 1 hour meeting/call tomorrow afternoon after 2 pm.

Thanks in advance.

Nadine

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RE_ Provincial Protection Agreement.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Hill, Krista [khill@torys.com]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; Feldman, Michael [mfeldman@torys.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]
CC: He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; 'Milligan, Peter' [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Smith, Elliot [ESmith@osler.com]; Ramchandani, Rima [rramchandani@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Emes, Aaron [aemes@torys.com]
Subject: RE: Provincial Protection Agreement
Date: Thursday, September 14, 2017 18:40:17
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710168191829~20170914224130000~Z~E10ED4C851B1260A757E157033ACAD21View the original item

Thank you Toby. Attached are a few comments from Torys on your re-draft of the term sheet (clean and blacklined to your version – please note that the formatting is not always clear on the blackline b

Attachments:

imagec81323.JPG (5 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710168191829~20170914224130000~Z~E10ED4C851B1260A757E157033ACAD21&AttachmentId=1imagec81323.JPG

OPG_Torys_Comments(14_9_17).pdf (187 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710168191829~20170914224130000~Z~E10ED4C851B1260A757E157033ACAD21&AttachmentId=2OPG_Torys_Comments(14_9_17).pdf

Term Sheet - Provincial Support Agreement - Sept 14.docx (33 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710168191829~20170914224130000~Z~E10ED4C851B1260A757E157033ACAD21&AttachmentId=3Term Sheet - Provincial Support Agreement - Sept 14.docx

RE_ Question.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: Question
Date: Friday, March 02, 2018 16:02:36
Attachment 1: RE: A market question
Attachment 2: RE: IESO Market related items

A couple of emails attached which show that we started discussions about market books early – say Jan 22 2017.

Kimberly Marshall | VP, Corporate Services & CFO

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: March 01, 2018 10:19 AM
To: Kim Marshall
Subject: Question

Do you have a record (email, etc.) of the approximate date I asked you to look at the accounting for market accounts?

Thanks,

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RE_ A market question.pdf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: A market question
Date: Sunday, January 22, 2017 12:55:25

As per our discussions/understanding with external auditors from the beginning of the market, the third paragraph below is part of our significant account policies.

The policy was developed due to the separate entity relationship of the market and the corporation. In the market the IESO acts as the principle for all the market participants.

I know that Julia McNally has raised some "semantic" questions regarding GAM funded transactions not being paid to market participants but as at least one side of the transaction falls within this policy (the funding is done through the market invoices) this practice has been continued under the merged entity. The other side of that transaction is reflected in the corporate balance sheet as an intercompany receivable.

Let me know if you need anything else. (and yes, this type of question does make me panic).

---

b) Revenue recognition
System fees earned by the IESO are based on approved rates for each megawatt of electricity withdrawn from the IESO-controlled grid (including scheduled exports) and embedded generation. System fees are recognized as revenue at the time the electricity is withdrawn. Rebates are recognized in the year in which the regulatory deferral account, before such rebates, exceeds regulated limits.

For 2015, the system fee for the newly amalgamated IESO comprised of the combined rate calculations of the respective pre-amalgamation entities. Specifically, the former IESO rate base was calculated on electricity withdrawn from the IESO-controlled grid (including scheduled exports and embedded generation), whereas the former OPA rate base only considered Ontario electricity consumers. The IESO has submitted a rate case to the OEB for 2016 that proposes the use of one, consistent rate, based on electricity withdrawn from the IESO-controlled grid that includes scheduled exports and embedded generation.

These financial statements do not include the financial transactions of market participants within the IESO-administered markets.

Other revenue represents amounts that accrue to the IESO relating to investment income on funds passing through market settlement accounts, as well as application fees. Such revenue is recognized as is earned.

Interest and investment income represents realized interest income and investment gains or losses on cash, cash equivalents, short-term investments and long-term investments.

Market sanctions represent funds received to offset payments disbursed related to penalties, damages, fines and payment adjustments arising from resolved settlement disputes.

-----Original Message-----
From: Kim Marshall
Sent: January 22, 2017 11:39 AM
To: Susan Nicholson
Subject: A market question

Don't panic just wondering, on what language do you rely on that supports market transaction not in corporate book? Thx

Sent from my iPad

RE_ IESO Market related items.pdf

From: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
CC: John Rattray [John.Rattray@ieso.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: IESO Market related items
Date: Tuesday, January 24, 2017 10:37:16

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Thanks Kim

As discussed, we (OPCD) is going to need documentation of the accounting basis for excluding the activities in the "market" books from the IESO financial statements, and therefore, the consolidated f/s of the Province. I would suggest that this be prepared in connection with KPMG in their role as auditors (although I've kept this email internal to government so as not to unduly involve advisors until you determine appropriate). I expect the architecture of any new solution is going to intersect with this accounting issue, so timing is important.

Thanks,

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: January-24-17 8:15 AM
To: Veinot, Cindy (TBS); mpicard@kpmg.ca; louellette@kpmg.ca; Petsche, Nadine (TBS); Patel, Bharat (TBS)
Cc: John Rattray; Pelino Colaiacovo
Subject: IESO Market related items

As discussed in this morning call, attached is the Ernst and Young report on the market settlement. Also attached is a market participants agreement for participation. It is more detail than anyone probably needs but shows the compliance to market rules.

Also attached is the ,market financial statements as of nov 30th. It shows the various balances including approx. 80 million from the OFA, mainly offsetting a 71mil RPP

balance. Happy to discuss further

Kimberly Marshall | VP, Corporate Services & CFO

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RE_ Regroup on FAP.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Regroup on FAP
Date: Thursday, April 13, 2017 12:18:19
Attachment 1: image001.gif

Hi Nadine,

I am available today from 3:00-3:30. Suzie is available beginning at 3:30. Please let me know how you would like to proceed.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, April 12, 2017 6:03 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Blake Langill <blake.w.langill@ca.ey.com>; Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: Regroup on FAP
Importance: High

Suzie/Lee Anne,

We will be scheduling a call for tomorrow afternoon at 3 pm to regroup on the FAP file.

I'll send out the invite shortly.

Thanks.

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April-12-17 9:47 AM
To: Petsche, Nadine (TBS); Blake Langill; Lee Anne Probert
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Request for feedback (time sensitive)

Hi Nadine:

We are looking at the document and have had a high level discussion of possible issues and wondering if you have time for a call to give you our initial thoughts at 1pm today?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, April 11, 2017 1:23 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: Request for feedback (time sensitive)
Importance: High

Suzie/Blake/LeeAnne,

Further to our discussion on Friday, we have received the updated draft Legislation for the Fair Hydro Act. It will continue to evolve, but is on a tight timeline, so we would appreciate your feedback on the currently envisioned model and any potential accounting risks from your perspective.

An important regroup of key stakeholders is planned for tomorrow afternoon, so if we can get your comments (concerns mainly) by tomorrow am it would be greatly appreciated.

Please direct your comments to both Cindy and myself.

Thanks.

Nadine

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image001.pdf

RE_ Request for Advice .rtf

From: Petsche, Nadine (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: RE: Request for Advice
Date: Monday, April 03, 2017 17:41:08

Hi Lee Anne. If you are free to talk now, we can chat. Please confirm if I should call you and at what #.

Nadine

From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: April-03-17 5:40 PM
To: Petsche, Nadine (TBS)
Subject: RE: Request for Advice

Hi Nadine,

I reached out to Blake and Suzie, but haven't heard back. Did you want to have a preliminary discussion with me?

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, April 03, 2017 10:40 AM

To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: Request for Advice
Importance: High

Good morning LeeAnne.

Please find attached a completed template reflecting a time-sensitive advisory request (related to the government's electricity price mitigation initiatives), including documents which provide additional context and direction.

I would like to arrange for a short call to review the request, today if possible. I anticipate that you may want to include others on this particular assignment based on your assessment of the experience/skills required.

I'll look forward to our chat.

Regards,

Nadine

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RE_ Seeking advice.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: RE: Seeking advice
Date: Thursday, December 08, 2016 08:37:42

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https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170110406226 3~20161208123751 0000~Z~A070244F3DCB83923ED09956B6F6A481View the original item

Hi Nadine:
Do you have time to discuss at 4pm? What is your timeline to come up with a position?
Thanks,
Suzie

From: Petsche, Nadine (TBS)
Sent: Wed

RE_ Seeking advice.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: RE: Seeking advice
Date: Thursday, December 08, 2016 08:37:42

Hi Nadine:
Do you have time to discuss at 4pm? What is your timeline to come up with a position?
Thanks,
Suzie

From: Petsche, Nadine (TBS)
Sent: Wednesday, December 07, 2016 6:46:11 PM
To: Suzie Gignac
Cc: Virani, Shyrose (TBS)
Subject: Seeking advice

Suzie,

I haven't heard back from Blake, so sending you a question that we're dealing with right now. Please advise if you might be available for a short call tomorrow to discuss. Nadine

Assuming that e GBE sells additional shares in the market (above book value), but that the government does not sell any of its own shareholdings. As a result, the government's ownership is diluted. What would the impact be on the government's gooks under PSAB?

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RE_ Torys Comments on Blakes Draft Legislation.rtf

From: Veinot, Cindy (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: Torys Comments on Blakes Draft Legislation
Date: Friday, April 07, 2017 08:07:06

Are you attending the meeting at Blakes at 10 this morning – thought we would see the state of the nation then.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: April-07-17 8:02 AM
To: Veinot, Cindy (TBS)
Subject: Fwd: Torys Comments on Blakes Draft Legislation

I am not sure if this version of the material is supposed to go to you so pls keep to yourself if not. There is a great deal of conversation still in process. Any chance we could defer our conversation this afternoon until monday when we see a new draft?

Sent from my iPad

Begin forwarded message:

> **From:** "Michael Boll" <Michael.Boll@ieso.ca>
> **To:** "Kim Marshall" <Kim.Marshall@ieso.ca>, "Jeannette Briggs" <jeannette.briggs@ieso.ca>, "Anthony Martinello" <Anthony.Martinello@ieso.ca>, "Michael Lyle" <Michael.Lyle@ieso.ca>
> **Subject: Fw: Torys Comments on Blakes Draft Legislation**
>
> Fyi
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Peter Hamilton <PHamilton@stikeman.com>

Sent: Thursday, April 6, 2017 4:38 PM

To: Michael Boll

Subject: FW: Torys Comments on Blakes Draft Legislation

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

See attached. Obviously not light comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Thursday, April 06, 2017 4:26 PM
To: ASHBOURNE, STEPHEN
Cc: JACKSON, ADAM; Peter Hamilton; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; JUDY.WILSON@blakes.com; Bryson.Stokes@blakes.com; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Feldman, Michael; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.
Subject: Torys Comments on Blakes Draft Legislation

All,

I am attaching our comments on the last version of the draft legislation sent to us by Blakes. Both a clean and blacklined version are attached.

This is being distributed to OPG at the same time as everyone else and so remains subject to their comments as this is very much a work in process.

We also just received comments from Hunton & Williams but in the interests of time we have not been able to include those in our mark up, but expect to be in a position to raise any of their big issues at our meeting tomorrow. Also, I will send their comments separately to Blakes.

Regards,

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

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RE_ Torys Comments on Blakes Draft Legislation.rtf

From: Veinot, Cindy (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: Torys Comments on Blakes Draft Legislation
Date: Friday, April 07, 2017 08:15:43
Attachment 1: image001.jpg

If you want to send me an email before you would leave to come to Blakes, I can let you know where things are at.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: April-07-17 8:10 AM
To: Veinot, Cindy (TBS)
Subject: Re: Torys Comments on Blakes Draft Legislation

I have an employee engagement related conflict which would look bad to move I

can get there about 12:30.

Thoughts?

Sent from my iPad

On Apr 7, 2017, at 8:07 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

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>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** April-07-17 8:02 AM
> **To:** Veinot, Cindy (TBS)
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Fyi

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From: Peter Hamilton <PHamilton@stikeman.com>

Sent: Thursday, April 6, 2017 4:38 PM

To: Michael Boll

Subject: FW: Torys Comments on Blakes Draft Legislation

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Peter Hamilton
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phamilton@stikeman.com

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Sent: Thursday, April 06, 2017 4:26 PM
To: ASHBOURNE, STEPHEN
Cc: JACKSON, ADAM; Peter Hamilton; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; JUDY.WILSON@blakes.com; Bryson.Stokes@blakes.com; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Feldman, Michael; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.
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image001.pdf

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LLP

RE_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Ramchandani, Rima [rramchandani@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; LAURETA LAPIRA May -TREASURY [may.lapira@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Feldman, Michael [mfeldman@torys.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Persad, Nicole [Nicole.Persad@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 18:17:06
Attachment 1: @

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Hi Rima. Here are my mark-ups of the agreements Torys circulated yesterday afternoon. These versions have not been reviewed by the Province, but are being circulated to this group to facilitate a dis

Attachments:

23239360-vpdf-CLPA - Protection Agreement.PDF (335 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201712223905030~201711212217320000~Z~01179C4B24AA36191369A802039C1361&AttachmentId=123239360-vpdf-CLPA - Protection Agreement.PDF

23239360-v17-CLPA - Protection Agreement.DOCX (57 KB)
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23239361-vpdf-CLPA - Process Agreement.PDF (268 KB)
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23239361-v14-CLPA - Process Agreement.DOCX (50 KB)
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RE_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; LAURETA LAPIRA May -TREASURY [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Persad, Nicole [Nicole.Persad@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Friday, November 24, 2017 15:14:31
Attachment 1: @

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All – apologies, my email below did not have a blackline for the Process Agreement. It is attached. Thank you.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 W

Attachments:
imagef62e24.JPG (5 KB)
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Blackline_ProcessAgreement.pdf (335 KB)
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184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201712264254107~201711241915550000~Z~10921BEA20F588504FAE8154B80CA6A1&AttachmentId=2Blackline_ProcessAgreement.pdf

RE_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: Hanslep, Malle (MOF) []
To: Ramchandani, Rima [rramchandani@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; LAURETA LAPIRA May -TREASURY [may.lapira@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Feldman, Michael [mfeldman@torys.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Persad, Nicole [Nicole.Persad@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
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Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Thursday, November 23, 2017 10:27:42

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Further to our discussion on Tuesday evening, I understand that Torys and Oslers were going to revise the agreements to reflect the discussion. Given the timing on this, the Province would like to re

RE_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

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Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Friday, November 24, 2017 15:04:09
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Blakes team,

Please find attached consolidated comments from the dealers and OPG (and their counsels) on the draft documents circulated below. These changes are drafting changes and clean up

Attachments:

imagecdbedf.JPG (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201712264254106~201711241905130000~Z~109217ACBF0AD97D13FC8243C2F31C01&AttachmentId=1imagecdbedf.JPG

-CLPA - Process Agreement(November 22_17).docx.pdf (335 KB)
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Blackline_ProtectionAgreement.pdf (397 KB)

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-CLPA - Process Agreement(November 22_17).docx (65 KB)
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RE_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Ramchandani, Rima [rramchandani@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; LAURETA LAPIRA May -TREASURY [may.lapira@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Feldman, Michael [mfeldman@torys.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Persad, Nicole [Nicole.Persad@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 18:17:06
Attachment 1: 23239360-vpdf-CLPA - Protection Agreement.PDF
Attachment 2: 23239360-v17-CLPA - Protection Agreement.DOCX
Attachment 3: 23239361-vpdf-CLPA - Process Agreement.PDF
Attachment 4: 23239361-v14-CLPA - Process Agreement.DOCX

Hi Rima. Here are my mark-ups of the agreements Torys circulated yesterday afternoon. These versions have not been reviewed by the Province, but are being circulated to this group to facilitate a discussion shortly at your office. They are/remain subject to Province input, etc. We propose to gather at your office at 5:45, if that makes sense to you. Regards, Steve

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

-----Original Appointment-----
From: bwood@torys.com [mailto:bwood@torys.com] **On Behalf Of** Ramchandani, Rima
Sent: Tuesday, November 21, 2017 3:43 PM
To: Ramchandani, Rima; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet -TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Mansoori, Nina; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Mayman, Gadi (OFA); Manning, Mike (OFA); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets
Cc: Ken Kandeepan; LADAK Lubna -TREASURY; Anna Strathy; Veinot, Cindy (TBS); McKinlay, Tom (MAG); Donaldson, Mark (TBS)
Subject: UPDATED - Fair Hydro -- Change of Law Agreements
When: Tuesday, November 21, 2017 5:00 PM-9:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys - 79 Wellington 33rd Floor

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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23239360-vpdf-CLPA - Protection Agreement.PDF

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST[1]

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] Torys and Blakes to discuss signatory on behalf of the Trust. The Manager is currently signing all Program Agreements on behalf of the Trust and has authority to do so. We would propose to do the same on the change of law agreement.

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[2], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

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

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

Pursuant to a Declaration of Trust[32] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

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

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

[2] ~~Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.~~

[32] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

"hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

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

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture[4] as of the date of this Agreement.

[4] ~~With respect to the possibility of unsanctioned amendments, the OPG proposal would allow amendments to be made in favour of bondholders to permit individual bondholders to sue the Province under this agreement. This is one circumstance that demonstrates why the Province needs the right to know about and consider all underlying amendments.~~

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

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

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. Not less than [3] Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, (a "**Guarantee Payment Date**")[5], if any, the Manager shall deliver a written statement, substantially in the form attached as Exhibit A.1 (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall paydeposit the Aggregate Approved Obligations Amount to the Indenture Trustee and the Indenture Trustee shall deposit such amount tointo the Protection Account.

[5] PM: Interest Payment Dates and Principal Payment Dates are set in the supplements. While the present intention is to set them on Payment Dates, there is no guarantee that will always be the case.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ~~apply all~~ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**")~~6~~.

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(ii) the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Guarantee Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or

~~6 For example, the effect of this is that senior notes will receive cash earmarked for sub notes based on the scheduled amounts payable for sub notes. Confirm that is the intention.~~

reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Guarantee Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account[7][3] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the [Financing Entity and the Indenture Trustee][8] shall apply ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a)[9]. Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party)

[7] ~~Use~~[3] Mechanics of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

[8] ~~Conform.~~

[9] ~~For example, amounts payable in respect of subnotes will not get the amounts payable to them based on scheduled payments since senior notes will preempt them under the acceleration waterfall.~~

in respect of the Approved Obligation to the extent so paid[104]. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

[104] A corresponding provision needs to be added to the Trust Indenture and each other ~~contract~~Funding Obligation Agreement under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section 8.02.

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements[11] and this Agreement, to:

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

[11] The deletion of the earlier proviso in this draft is based on the understanding that the Province will receive adequat e notices of these event under the Trust Indenture. OPG will agree not to allow any of these events without confirming to the Province under the Process Certificate that the changes are within the agreed scope of the Reviewed Documents, etc.

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred.

4.02 Adherence Conditions[12][5]

~~There shall be no Adherence Conditions applicable in relation to: (i) a Primary Obligation that is not a Funding Obligation or (ii) a Primary Obligation that (x) arises under a Derivative Agreement, or (x) is a Funding Obligation that does not provide for the advance of more than $■ to the Financing Entity.~~ The following shall be the Adherence Conditions applicable in relation to ~~a~~each Primary Obligation ~~that is a~~other than any Funding Obligation ~~that does provide for the advance of~~under which not more than $■ ~~to~~in the aggregate may become payable by the Financing Entity:

(a) the Primary Obligation when incurred ~~will be~~is an Obligation Secured under the Trust Indenture; and

(b) ~~either (x)~~ OPG, as FSM, delivers ~~an officer's certificate~~a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, one Business Day prior to the Financing Entity entering into ~~of~~or becoming bound by the related Funding Obligation Agreement, confirming that OPG has ~~complied with its obligations to the Province in connection with the Primary Obligation, or (y) OPG has in fact~~delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that

[12] ~~The~~[5] Dealers to explain how the current structure requiring satisfaction of the adherence conditions in the Protection Agreement ~~impacts~~is more onerous than ordinary adherence conditions applicable to government guaranteed bonds and to estimate the quantum impact on the marketability of the transaction and ~~creates~~explain what uncertainty an ordinary closing condition of this type poses for investors. ~~Province/OPG/Dealers to discuss moving the adherence conditions to the Process Agreement while preserving Province's oversight of its obligations under the Protection Agreement~~.

OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Primary Obligation; and

(c) in respect of a Primary Obligation other than a Refinancing of a Primary Obligation in respect of which the Adherence Conditions had been satisfied, the Province has not provided ~~a~~ Suspension Notice to the Indenture Trustee, ~~the FSM~~OPG and the Financing Entity ~~in accordance with the terms of this Agreement~~.

For greater certainty, satisfaction of the Adherence Conditions for ~~any~~a Funding Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under~~, or in respect of,~~ the Funding Obligation ~~and the related~~, as such Funding Obligation ~~Agreement as such agreement~~ may be amended, restated, supplemented or otherwise modified from time to time.[13]

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02(b)(x) in connection with an incurrence of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without

[13] ~~This language was added to track Section 2(2) of the regs and ensure that there is no obligation to satisfy the Adherence Conditions every time interest is incurred in respect of a Funding Obligation for which the Adherence Conditions have already been satisfied.~~

any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.[14]6

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

5.03 ~~Province May Perform Other Program Agreement Covenants.~~[15] Intentionally Deleted

~~If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so~~

[14]6 Section to be updated to conform with section in the Trust Indenture once settled.

[15] ~~To be confirmed this covenant is only meant to apply following a Payment Demand? Note that once the Province exercises this right, ,the desired accounting treatment will be lost.~~

~~performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.~~[16]

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.~~17~~[17]

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the

~~16 Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.~~

~~17~~[17] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

6.04 Interim Period

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

6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

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

7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their

correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

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

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

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

~~A~~The Province may, at any time and for any reason, declare that the Limited Guarantee under this Agreement shall not apply to any Obligation Secured incurred on or after such declaration, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") ~~may be provided by~~to the Province to the Indenture Trustee, the FSM and the Financing Entity ~~following the Province becoming aware of the occurrence of a Program Breach~~.

~~[NTD: the concept of Breach Event has been removed from Protection Agreement and replaced by provisions in the Process Agreement providing that upon notice of a Breach Event to OPG in the Process Agreement, OPG will not be permitted to deliver the certificate required to satisfy the Adherence Conditions. This was done to cleanse the Protection Agreement of any references to the Process Agreement but leave the Province in the same position of being able to (indirectly) suspend application of the change of law agreement to future issuances upon a Breach Event.]~~

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered[18].

8.03 Termination Notice

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

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the later of:

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

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been

[18] ~~This will be affected by the resolution of the "amendments" point.~~

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

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

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

and

Ministry of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

~~(c) Notwithstanding Section 9.03(a), assignments and participations of the rights and obligations of the Indenture Trustee and Specified Creditors (other than the Province) in accordance with the terms of the Trust Indenture may also assign the rights and obligations of the Indenture Trustee and Specified Creditors under this Agreement.~~

9.04 Enurement

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

9.05 FIPPA

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

9.06 No Petition

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

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, [BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER][8]

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

[8] To be discussed.

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS[19]

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

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with ~~the terms~~such applicable payment provisions of the Trust Indenture in respect of each relevant month [during each Reference Period from and after May, 2021][9] is equal to the ~~Finance Amount~~[estimated finance amount determined in respect of such Reference Period pursuant to

[19] ~~If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.~~

[9] What about earlier periods? Are the earlier periods covered at all, or is the intention that they would be determined without regard to the acceleration mechanics of the Regulation?

section • of the General Regulation (as set forth on the date hereof)][10] divided by the number of months in such Reference Period.[20]

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the Funding Obligation Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of the form of assumption agreement set forth in Exhibit E.

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

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

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

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

[10] This needs to tie into the "estimated finance amount" determined under the General Regulation applicable during the Reference Period.

[20] ~~PM: the challenge is that the permitted acceleration amount is determined under the Regulations but in a post-change of law environment, we don't know what provisions of the Regulation remain. By going to "Finance Amount", we are using a defined term that is frozen at the date of this agreement.~~

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

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

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

"**Paying Agent**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

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

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

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

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in in the General Regulation as of the date hereof.

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

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

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

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

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT A.1
FORM OF GUARANTOR SETTLEMENT STATEMENT

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Tuesday, November 21, 2017 5:02:28 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/16
Description	TOR_2528-#23239360-v16-CLPA_-_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/17
Description	TOR_2528-#23239360-v17-CLPA_-_Protection_Agreement
Rendering set	Standard

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

Statistics:	
	Count
Insertions	79
Deletions	93
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	172

23239360-v17-CLPA - Protection Agreement.pdf

Draft: November 21, 2017

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST[1]

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] Torys and Blakes to discuss signatory on behalf of the Trust. The Manager is currently signing all Program Agreements on behalf of the Trust and has authority to do so. We would propose to do the same on the change of law agreement.

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

RECITALS

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

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

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

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

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

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to

any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

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

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the

Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a

Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Payment Date:

i. Not less than [3] Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, (a "**Guarantee Payment Date**"), the Manager shall deliver a written statement, substantially in the form attached as Exhibit A.1 (a "**Guarantor Settlement Statement**") setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(i) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount paid to the

Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(ii) the Province shall be paid the amount by which (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to subclause 2.01(a)iv(i), exceeds the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Guarantee Payment Date (such payments to the Province being "**Subrogation Amounts**"); and

(iii) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(ii) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Guarantee Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account[3] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

[3] Mechanics of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[4]. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

[4] A corresponding provision needs to be added to the Trust Indenture and each other Funding Obligation Agreement under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03 or Section 8.02.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred.

4.02 Adherence Conditions[5]

The following shall be the Adherence Conditions applicable in relation to each Primary Obligation other than any Funding Obligation under which not more than $■ in the aggregate may become payable by the Financing Entity:

(a) the Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

(b) OPG, as FSM, delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, one Business Day prior to the Financing

[5] Dealers to explain how the current structure requiring satisfaction of the adherence conditions in the Protection Agreement is more onerous than ordinary adherence conditions applicable to government guaranteed bonds and to estimate the quantum impact on the marketability of the transaction and explain what uncertainty an ordinary closing condition of this type poses for investors.

Entity entering into or becoming bound by the related Funding Obligation Agreement, confirming that OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Primary Obligation; and

(c) in respect of a Primary Obligation other than a Refinancing of a Primary Obligation in respect of which the Adherence Conditions had been satisfied, the Province has not provided Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

For greater certainty, satisfaction of the Adherence Conditions for a Funding Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Funding Obligation, as such Funding Obligation may be amended, restated, supplemented or otherwise modified from time to time.

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02(b)(x) in connection with an incurrence of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement

for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.[6]

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

[6] Section to be updated to conform with section in the Trust Indenture once settled.

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[7]

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: the forms of assumption agreement(s) need to be settled before this agreement is finalized.]**

6.04 Interim Period

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

6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has

[7] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee and the Beneficiaries shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

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

7.02 Not Responsible for Recitals or Issuance of Notes

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

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

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

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

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

The Province may, at any time and for any reason, declare that the Limited Guarantee under this Agreement shall not apply to any Obligation Secured incurred on or after such declaration, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Province to the Indenture Trustee, the FSM and the Financing Entity.

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred or amended on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred or amended on or after the time such Suspension Notice is delivered.

8.03 Termination Notice

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

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the later of:

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

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

9.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

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

(c) if to the Province:

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

and

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

(d) if to the Indenture Trustee:

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

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

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

9.04 Enurement

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

9.05 FIPPA

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

9.06 No Petition

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

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, [BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER][8]

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS

[8] To be discussed.

INDIVIDUAL CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month [during each Reference Period from and after May, 2021][9] is equal to the [estimated finance amount determined in respect of such Reference Period pursuant to section • of the General Regulation (as set forth on the date hereof)][10] divided by the number of months in such Reference Period.

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[9] What about earlier periods? Are the earlier periods covered at all, or is the intention that they would be determined without regard to the acceleration mechanics of the Regulation?

[10] This needs to tie into the "estimated finance amount" determined under the General Regulation applicable during the Reference Period.

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the Funding Obligation Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of the form of assumption agreement set forth in Exhibit E.

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

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

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

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

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

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

"**Paying Agent**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (ii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; and (iii) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

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

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in in the General Regulation as of the date hereof.

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

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

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

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

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT A.1
FORM OF GUARANTOR SETTLEMENT STATEMENT

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[1]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[2]

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

Prior to entering into this Agreement, OPG provided the Province with ~~copies~~the proposed forms of certain of the Transaction Documents, and the Province has ~~confirmed by a notice delivered to OPG that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.~~[2]not objected to such forms.

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

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

[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare. Blakes and Torys to discuss.

[2] Lawyers to discuss.

~~[2] Once agreements are settled, Province to provide draft notice.~~

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

1.02 References to the Financing Entity

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

1.03 Effect of Headings

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

1.04 Successors and Assigns

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

1.05 Severability

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

1.06 Governing Law

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

1.07 Proceedings Against the Crown Act

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

1.08 Attornment

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

1.09 Counterparts; Electronic Delivery

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

1.10 Non-Business Days

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

1.11 Waiver, Amendment

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

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) Not less than [15 Business Days], or such lesser period as the Province may agree to in writing, prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

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

(c) Promptly following[3] (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

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

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

[3] This change was made due to accounting.

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

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

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

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

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels; ~~or~~

(B) [4]extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected[3];

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

[4] ~~As discussed in the meeting, this causes an accounting issue. Additionally, OPG is not permitted to resign under the Management Agreement~~[3] Added to address the scenarios contemplated in 2.01(c).

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

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

(iv) after the ~~delivery of a Payment Demand~~[5]occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

~~(c) For greater certainty, nothing in this Agreement is intended to derogate from OPG's obligations as FSM and Manager.~~

(c) ~~(d)~~ Nothing in this Agreement [nor in the Change of Law Protection Agreement][4] shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate[6][5]

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Funding Obligation[7] (other than ~~a~~any Funding

[5] ~~Given that delivery of a Payment Demand is the trigger for the Limited Guarantee, the delivery of the Payment Demand is the more appropriate milestone.~~

[4] This language has extra-contractual implications and so its meaning as between only 2 of the parties to the Protection Agreement is uncertain. Torys to explain intention.

[6][5] OPG/Dealers have indicated that "The current structure requiring satisfaction of the adherence conditions in the Protection Agreement impacts the marketability of the transaction and creates uncertainty for investors. Province~~/OPG/~~ has asked Dealers to ~~discuss moving~~explain how the current structure requiring satisfaction of the adherence conditions ~~to the Process Agreement while preserving Province's oversight of its obligations under~~in the Protection Agreement is more onerous than ordinary adherence conditions applicable to government guaranteed bonds and to estimate the quantum impact on the marketability of the transaction and explain what uncertainty an ordinary closing condition of this type poses for investors.

[7] ~~OPG/Province to discuss circumstances in which a certificate will be required under this Section.~~

Obligation ~~that (x) arises under a Derivative Agreement, or (y) is a Funding Obligation that does not provide for the advance of~~under which not more than $■ ~~to~~in the aggregate may become payable by the Financing Entity), and (ii) on the Business Day on which the financial terms of such Funding Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Funding Obligation:[8]

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

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

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

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available ~~for review~~ to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and[9]

[8] ~~Note to Province: We have revised this section so as to allow the Process Agreement to be cleansed from the Change of Law Protection Agreement. In addition to all the deliverables under section 2.01 of this Agreement, the Province will receive the certifications in section 3.01 in the case of an incurrence of funding obligations and an amendment to funding obligations.~~

[9] ~~We have cleansed the Protection Agreement of the concept of the Process Agreement and the related concept of the Breach Event. The process certificate already contemplates that a breach event has not occurred at the time of delivery of the certificate but we have also provided the added comfort of the covenant below in section 3.02.~~

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 ~~Acknowledgement~~ Delivery of a Suspension Notice

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section ~~3.01~~8.01 of ~~this Agreement, any two senior officers of OPG are authorized to deliver the certificate referred to in Subsection 4.02(b) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with its obligations to the Province in connection with the incurrence of the Funding Obligations in respect of which such certificate is delivered; provided that, upon receipt of a Breach Event~~the Change of Law Protection Agreement, the Province is entitled to deliver a Suspension Notice~~, OPG covenants~~. The Province agrees not to deliver ~~the certificate referred to in Subsection 4.02(b) of the~~a Suspension Notice pursuant to Section 8.01 Change of Law Protection Agreement ~~to the Indenture Trustee.~~ [10]unless any of the following circumstances has occurred:

(a) a Program Breach; and

(b) a Breach Event.

3.03 Meaning of "~~Reviewed~~Reference Documentation"

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

(a) is a Transaction Document provided to, and not objected to by, the Province prior to the making of this Agreement~~ and in respect of which the notice~~, as contemplated in the fifth recital to this Agreement~~ has been delivered by the Province to OPG~~; or

[10] ~~OPG needs the authority to provide this certification.~~

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been ~~accepted~~objected to by the Province, ~~as confirmed~~ by ~~way~~delivery of ~~a written~~an objection notice ~~of acceptance from the Province~~in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.04 Meaning of "Substantially in the Form"

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

(a) with respect to the ~~Reviewed~~Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such ~~Reviewed~~Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the ~~Reviewed~~Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of ~~Reviewed~~Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

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

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days, or such lesser period as the Province may agree to in writing, prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG,[11] and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG,[12] and the revised Protection

[11] ~~This is an accounting comment.~~
[12] ~~This is an accounting comment.~~

Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

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

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

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

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

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

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

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

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

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

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[136]

6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit A (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Information Notice to OPG (the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

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

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

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

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

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

[136] Note: Lawyers to discuss assumption mechanics.

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

6.03 Settlement of Terms

Following receipt and ~~review~~consideration by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice, and Article VI of this Agreement shall ~~continues~~continue to apply unaffected.

6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, ~~will~~shall use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use commercially reasonable efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations that arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[~~14~~7]

[~~14~~7] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors (including in the applicable Funding Obligation Agreement) will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

ARTICLE VII
BREACH EVENTS

7.01 Breach Events

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

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

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

~~7.02 Notice on Breach Event~~

~~If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a written notice in the form of Exhibit ■ (a "Breach Event Suspension Notice") to OPG.~~

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

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

8.02 Notices

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

of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

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

(b) if to the Province:

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

and

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

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

8.03 Assignment

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

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____

Name:
Title:

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

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

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

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS[15]

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

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

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

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

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

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

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

has the meaning ascribed thereto in Section 7.01.

"**Breach Event Suspension Notice**" has the meaning ascribed thereto in Section 7.02.

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

[15] If Province is satisfied that it will receive notice of any amendments, waivers, etc. under the various agreements, and corresponding rights under the trust indenture as a secured creditor, Province will not require veto rights over changes to the defined terms in the MTI. All of this is predicated on Province receiving comfort from OPG that no changes, amendments, waivers, etc. will be made if outside the pre-agreed scope of the reviewed documents.

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

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

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

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

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

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

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

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

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

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

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

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture

Trustee dated as of [■], 2017.

EXHIBIT A
FORM OF ELECTION INFORMATION NOTICE

EXHIBIT B
FORM OF BREACH EVENT SUSPENSION NOTICE

Document comparison by Workshare Compare on Tuesday, November 21, 2017 5:14:34 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/13
Description	TOR_2528-#23239361-v13-CLPA_-_Process_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239361/14
Description	TOR_2528-#23239361-v14-CLPA_-_Process_Agreement
Rendering set	Standard

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

Statistics:	
	Count
Insertions	80
Deletions	82
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	162

23239361-v14-CLPA - Process Agreement.pdf

Draft: November 21, 2017

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.[1]

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[2]

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

Prior to entering into this Agreement, OPG provided the Province with the proposed forms of certain of the Transaction Documents, and the Province has not objected to such forms.

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

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

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[1] Blakes suggests that it be made clear in the Declaration of Trust that OPG is establishing the Trust. Blakes would appreciate the benefit of Torys analysis as to how the Trust is an "entity" under the OFHPA, as opposed to the trustee. Clearly OPG has not established Computershare. Blakes and Torys to discuss.

[2] Lawyers to discuss.

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

1.02 References to the Financing Entity

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

1.03 Effect of Headings

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

1.04 Successors and Assigns

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

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

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

1.07 Proceedings Against the Crown Act

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

1.08 Attornment

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

1.09 Counterparts; Electronic Delivery

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

1.10 Non-Business Days

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

1.11 Waiver, Amendment

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

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

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

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

(c) Promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

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

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

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

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

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

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected[3];

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

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

(iv) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension

[3] Added to address the scenarios contemplated in 2.01(c).

right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement [nor in the Change of Law Protection Agreement][4] shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate[5]

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

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

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

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[4] This language has extra-contractual implications and so its meaning as between only 2 of the parties to the Protection Agreement is uncertain. Torys to explain intention.

[5] OPG/Dealers have indicated that "The current structure requiring satisfaction of the adherence conditions in the Protection Agreement impacts the marketability of the transaction and creates uncertainty for investors. Province has asked Dealers to explain how the current structure requiring satisfaction of the adherence conditions in the Protection Agreement is more onerous than ordinary adherence conditions applicable to government guaranteed bonds and to estimate the quantum impact on the marketability of the transaction and explain what uncertainty an ordinary closing condition of this type poses for investors.

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

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

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

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Delivery of a Suspension Notice

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 8.01 of the Change of Law Protection Agreement, the Province is entitled to deliver a Suspension Notice. The Province agrees not to deliver a Suspension Notice

pursuant to Section 8.01 Change of Law Protection Agreement unless any of the following circumstances has occurred:

(a) a Program Breach; and

(b) a Breach Event.

3.03 Meaning of "Reference Documentation"

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

(a) is a Transaction Document provided to, and not objected to by, the Province prior to the making of this Agreement, as contemplated in the fifth recital to this Agreement; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.04 Meaning of "Substantially in the Form"

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

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences

between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days, or such lesser period as the Province may agree to in writing, prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

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

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

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

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

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

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

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

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

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any

agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[6]

6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit A (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Information Notice to OPG (the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

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

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

[6] Note: Lawyers to discuss assumption mechanics.

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

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

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

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

6.03 Settlement of Terms

Following receipt and consideration by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice, and Article VI of this Agreement shall continue to apply unaffected.

6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, shall use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG, as FSM, shall cause the Financing Entity to use commercially reasonable efforts to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or

any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations that arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[7]

ARTICLE VII
BREACH EVENTS

7.01 Breach Events

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

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section **[4.02]** of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

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

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic

[7] The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors (including in the applicable Funding Obligation Agreement) will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

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

(a) if to OPG:

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

(b) if to the Province:

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

and

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

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

8.03 Assignment

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

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____

Name:
Title:

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

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

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

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

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

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

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

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

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

has the meaning ascribed thereto in Section 7.01.

"**Breach Event Suspension Notice**" has the meaning ascribed thereto in Section 7.02.

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

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

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

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

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

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

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

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

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

EXHIBIT A
FORM OF ELECTION INFORMATION NOTICE

EXHIBIT B
FORM OF BREACH EVENT SUSPENSION NOTICE

RE_ psab response_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: psab response?
Date: Thursday, November 30, 2017 15:20:09

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801024912823~201711301920140000~Z~B08905AD69D2EE19B10886AA2F243511View the original item

Ok thx

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toron

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To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
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Date: Thursday, November 30, 2017 15:20:09

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Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: November 30, 2017 2:18 PM
To: Kim Marshall
Subject: RE: psab response?

Hi Kim -- I think it would be helpful for them to understand more about the RPP – the OEB's role in that process and how that continues, but is expanded to take into consideration the amount of the deferred payments from the ratepayers.

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: November 30, 2017 8:05 AM
To: Veinot, Cindy (TBS)
Subject: psab response?

Here is what I am running by opg – any thoughts on approach before I do that? Need more detail on opg accounting or leave for another discussion ? Thx

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

As per the legislation, OPG provides the clean energy adjustment recoverable for a specific period to the OEB who establishes the rate for specified consumers.

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Parts of the legislation do apply to OPG. The IESO has the original right to recover from future rates. This creates the regulatory asset, like the fair hydro predecessor – RPP or . The IESO right to recover and any obligations will be transferred to the financing entity. While the financing entity is better able to speak to their accounting than I am, my understanding is they will have a variance account which will be consolidated into OPG and then the provincial books.

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

The OFHPA legislation covers the OEB oversight. Note – can we be more specific here?

Kimberly Marshall | VP, Corporate Services & CFO

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Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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RE_ question.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: question
Date: Friday, July 21, 2017 13:02:40

Hi Nadine,

The intention of the footnote is as you indicate.

I was basing the footnote on the following excerpt. My interpretation is that OGOs can't use 4200 (4200 is for government NPOs). Perhaps I'm looking in the wrong spot or misinterpreting. Your thoughts?

Lee Anne

.16 For purposes of determining the appropriate standards, a government organization may be classified as:

(a) a government business enterprise;

(b) a government not-for-profit organization; or

(c) an other government organization.

.17 For purposes of preparing general purpose financial statements, government business enterprises apply the standards for publicly accountable enterprises in Part I of the CPA Canada Handbook – Accounting.

.18 For purposes of preparing general purpose financial statements, government not-for-profit organizations apply the standards for not-for-profit organizations in the PSA Handbook or the standards in the PSA Handbook without Sections PS 4200 to PS 4270 (the PS 4200 series). [2]

.19 For purposes of preparing general purpose financial statements, other government organizations would normally apply the standards for governments in the PSA Handbook. When these standards do not meet their financial statement users' needs, the standards applicable to publicly accountable enterprises in Part I of the CPA

Canada Handbook – Accounting should be considered. The standards determined to be most appropriate should be disclosed and consistently applied.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 12:50 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: question

Lee Anne,

I'm just reviewing the paper and had a question on the footnotes to the attached table. I think that the purposes FN1 is to reference the fact that OGOs have a choice to use IFRS as well, where it may better meet user needs. In fact, OGOs an use PSAS, PSAS +4200 or IFRS. I just wanted to clarify the intention, and suggest that we might want to consider rewording for clarity.

Thanks.

Nadine

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GRE

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OGO

PSAS[1]

Consolidation

PSAS

OPG

GBE

US GAAP[2]

Modified equity method

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3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 12:50 PM
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From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: RE: question
Date: Friday, July 21, 2017 13:33:33

Great. Thanks.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 1:30 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Patel, Bharat (TBS) <Bharat.Patel3@ontario.ca>
Subject: Fw: question
Importance: High

Lee Anne,
Thanks for your response. Bharat is away today, but we'll get back to you next week with a definitive response, and some examples. N
From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Friday, July 21, 2017 1:02 PM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS)
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RE_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Provis, Ian (TBS) [Ian.Provis@ontario.ca]
Subject: RE: year end
Date: Wednesday, April 04, 2018 08:21:01
Attachment 1: image002.jpg
Attachment 2: image003.gif

Thanks, Jeannie:

Also, are you going to send me the invoice on the work done on Toronto Waterfront for Ian Provis?. Can you please change the address for Mark Donaldson, all future invoices should be addressed to Mark Donaldson, 7 Queen's Park Crescent, 2nd Floor, Toronto ON M7A 1Y7

Thanks

Shyrose Virani

From: Jeannie Kaminski [mailto:Jeannie.Kaminski@ca.ey.com]
Sent: April 3, 2018 12:56 PM
To: Virani, Shyrose (TBS)
Cc: Suzie Gignac
Subject: FW: year end

Hi Shyrose,

Attached please find EY's invoice. Should you have any questions or concerns, please do not hesitate to contact me.

Have a super day!

Jeannie Kaminski | Executive Assistant, Assurance Services

to Stephen McIntyre and Suzie Gignac

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com

Website: http://www.ey.com

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From: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Date: April 3, 2018 at 9:05:11 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: RE: year end

Thanks Suzie for letting me know, is it possible to email the copy of the invoice today please

Thanks

shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 2, 2018 12:22 PM
To: Virani, Shyrose (TBS)
Cc: Jeannie Kaminski
Subject: RE: year end

Hi Shyrose:

We are preparing an invoice for March as of end of last week. It is related primarily to transfer payment work we did for Ian Provis in the last two weeks and will be for approx. $7,500.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: March-12-18 9:02 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: year end

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks

Shyrose

p.s. I did receive invoice for February.

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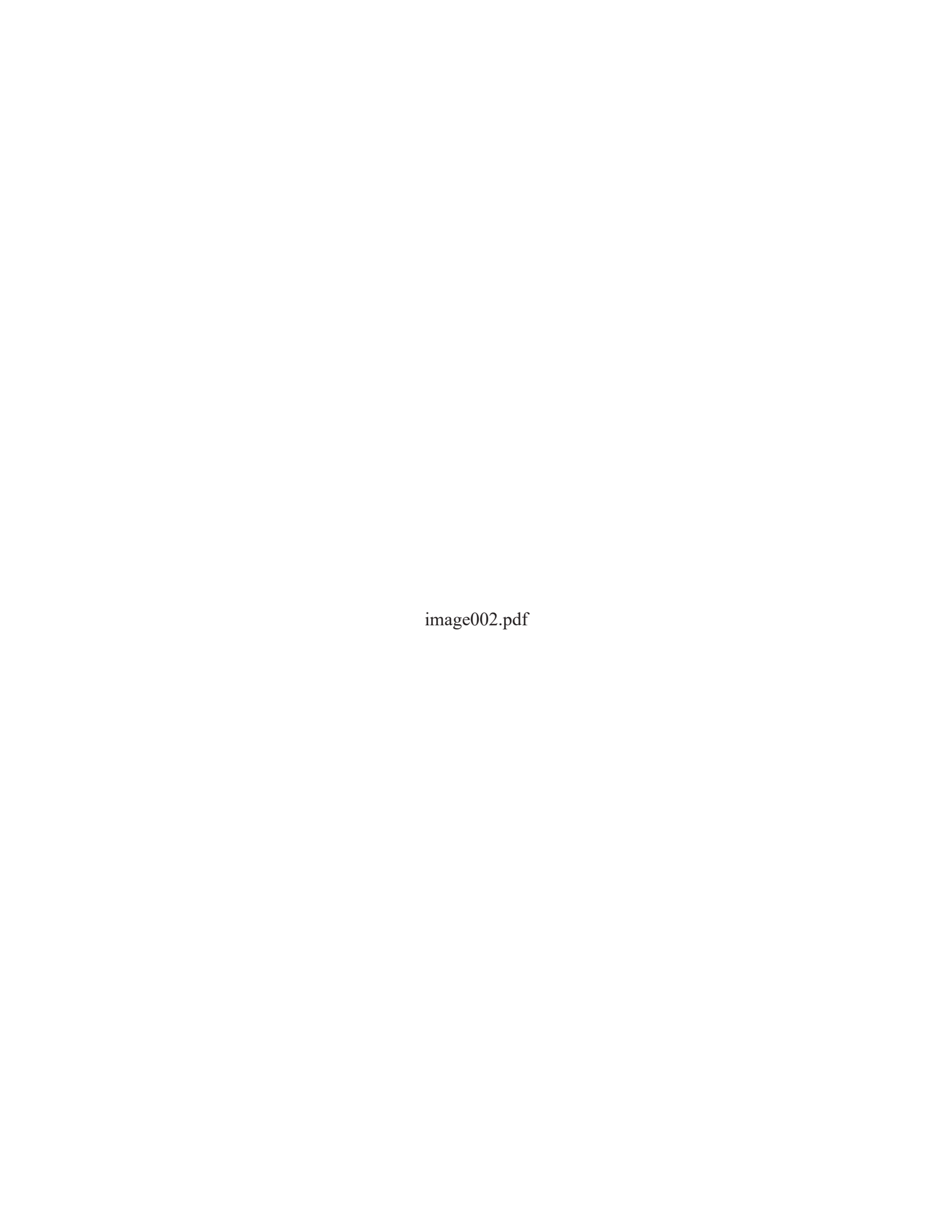
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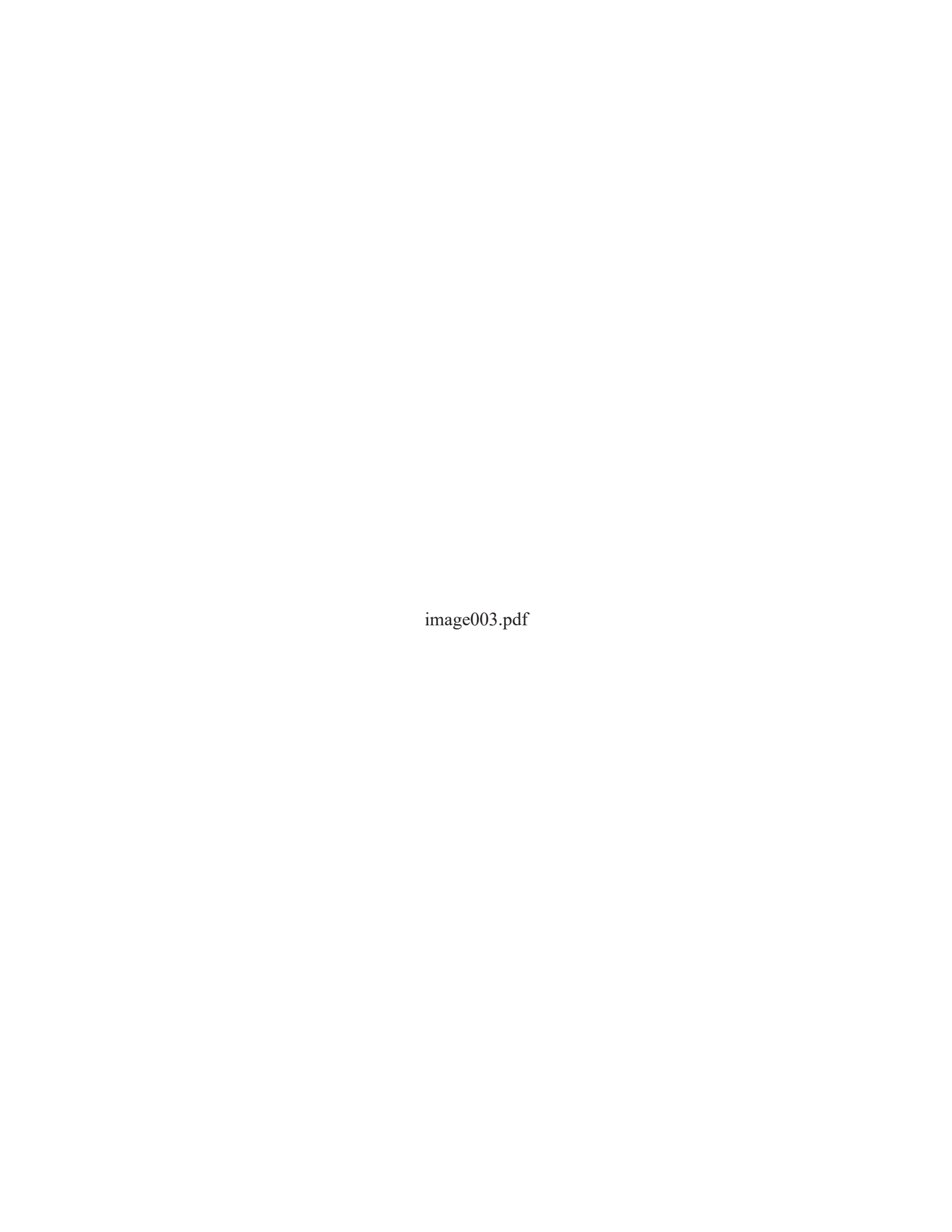
image003.pdf

Re_ Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt
Date: Wednesday, August 30, 2017 17:47:43

Ok thx

Sent from my iPhone

On Aug 30, 2017, at 4:42 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim -- as discussed earlier today, attached is a draft of a briefing deck on Public Accounts should a decision be made to go ahead with one. Could you please review the IESO content ASAP and get back to me with any edits (EOD tomorrow)? I will let you know when I hear of a final decision one way or the other. Please do not circulate any further at this point given the go/no go decision has not been made.
>
> Thanks,
>
> Cindy
>
> <Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt>

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Re_ Question.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Question
Date: Thursday, March 01, 2018 11:39:52

Yes, will pass on, can it wait til tomorrow

Sent from my iPad

On Mar 1, 2018, at 10:19 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Do you have a record (email, etc.) of the approximate date I asked you to look at the accounting for market accounts?
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> Thanks,

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Re_ Quick Question.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Susan Nicholson [susan.nicholson@ieso.ca]
Subject: Re: Quick Question
Date: Wednesday, August 09, 2017 11:33:25

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Don't think we did if not in email attachments

Sent from my iPhone

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> Hi Kim and Susan – do you have a sum

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From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Quick Question
Date: Wednesday, August 09, 2017 11:29:27

Can u pls call
4165457202

Sent from my iPhone

On Aug 9, 2017, at 11:28 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim and Susan – do you have a summary of the interactions with the AG on the FHP – specifically, I'm looking for the date the cabinet submission from March 1 was provided to the AG.
>
> Thanks,
>
> Cindy

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Re_ RRA.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Re: RRA
Date: Friday, June 09, 2017 08:44:37

Any chance we could move this to the afternoon of the 15th

Sent from my iPad

On Jun 8, 2017, at 12:29 PM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

> Michel/Kim,
>
> Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.
>
> Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.
>
> Thanks in advance.
>
> Nadine

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Re_ RRA.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: RRA
Date: Friday, June 09, 2017 08:53:08

Thanks!

Sent from my iPad

On Jun 9, 2017, at 8:52 AM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

> Thanks Kim.
>
> I've sent a revised invite. Hoping that all will be available at this time. Happy Friday!
> Nadine
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** June-09-17 8:45 AM
> **To:** Petsche, Nadine (TBS)
> **Cc:** Picard, Michel (mpicard@kpmg.ca); Virani, Shyrose (TBS)
> **Subject:** Re: RRA
>
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> Sent from my iPad
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Thanks in advance.

Nadine

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Re_ Rate Regulated Accounting (time change).rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: Rate Regulated Accounting (time change)
Date: Friday, June 09, 2017 09:01:07

Sorry I have a 230 to 330 I may be able to move up a bit will check on mon

Sent from my iPad

> On Jun 9, 2017, at 8:59 AM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:
>
>
>
> Sent from my iPad
>
> Begin forwarded message:
>
> From: "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>>
> To: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>, "LeeAnne.Probert@ca.ey.com<mailto:LeeAnne.Probert@ca.ey.com>" <LeeAnne.Probert@ca.ey.com<mailto:LeeAnne.Probert@ca.ey.com>>, "Suzie Gignac (suzie.r.gignac@ca.ey.com<mailto:suzie.r.gignac@ca.ey.com>)" <suzie.r.gignac@ca.ey.com<mailto:suzie.r.gignac@ca.ey.com>>, "Blake Langill (blake.w.langill@ca.ey.com<mailto:blake.w.langill@ca.ey.com>)" <blake.w.langill@ca.ey.com<mailto:blake.w.langill@ca.ey.com>>, "Picard, Michel (mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>)" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>, "Kim Marshall" <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>>
> Subject: Rate Regulated Accounting (time change)
>
> Cindy to moderate.
>
> June 9th updated for time change due to availability conflicts (meeting still June 15th, but in afternoon).
>
>
> <meeting.ics>

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Re_ SCOPA Status Table.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: SCOPA Status Table
Date: Thursday, January 18, 2018 17:08:15

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I saw today, thx for following up

Sent from my iPad

On Jan 18, 2018, at 3:50 PM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:

> Hi Kim
>
> Attached are the draft responses

Re_ SCOPA Status Table.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Kate Longmoore [Kate.Longmoore@ieso.ca]
Subject: Re: SCOPA Status Table
Date: Thursday, January 18, 2018 17:09:11

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View the original item

Sarah, copying Kate who has our input

Sent from my iPad

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Re_ Thanks .rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Thanks
Date: Thursday, March 01, 2018 08:33:22

All good, I have call with staff next mon. If any update on process will let you know.

Sent from my iPad

> On Feb 28, 2018, at 3:28 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> No problem -- I was thinking that as I was explaining rr accounting that maybe I shouldn't be, given you and OPG were in the room -- but alas, it seemed to go OK.
>
> I'm curious to see whether they write a report or not.
>
> Cindy
>
> -----Original Message-----
> From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> Sent: February 28, 2018 3:24 PM
> To: Veinot, Cindy (TBS)
> Subject: Thanks
>
> For being proactive
>
> Sent from my iPhone
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Re_ Thanks .rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Thanks
Date: Wednesday, February 28, 2018 16:39:04

All good

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Re_ Tomorrow’s meeting.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: Tomorrow's meeting
Date: Friday, July 14, 2017 08:08:57

Thanks. Between 10:00 and 2:15 on Monday works best for me.

Nadine, I would still like to chat with you today if that's possible. I'm working on your comments and there's a few I would like to clarify. Is there a time between 9:30 and 3:00 that you're available?

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: July 14, 2017 at 8:03:10 AM EDT
To: Lee Anne Probert <leeanne.probert@ca.ey.com>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Jack, Shannon (TBS) <Shannon.Jack@ontario.ca>, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>, Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: Re: Tomorrow's meeting

Let's reschedule for Monday. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Petsche, Nadine (TBS)
Sent: Thursday, July 13, 2017 10:51 PM
To: Lee Anne Probert; Veinot, Cindy (TBS)
Cc: Suzie Gignac; Jack, Shannon (TBS); Virani, Shyrose (TBS)
Subject: Re: Tomorrow's meeting

Hi Lee Anne.
I'm not sure of Cindy's schedule,but 9;30-10:30 might work. I've copied Shyrose and Shannon who will be able to confirm in the am.
Thanks.
N

From: Lee Anne Probert
Sent: Thursday, July 13, 2017 9:46 PM
To: Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Cc: Suzie Gignac
Subject: Tomorrow's meeting

Nadine and Cindy,

Would it be possible to change the time of tomorrow's meeting? Suzie and I are both available the following times: before 8:30, 9:15-10:30, 2:30-3:00, 4:15-5:30. If rescheduling doesn't work for you, Suzie will be able to be on the call at 8:30.

Sorry for the late request.

Regards,
Lee Anne

--
[cid:image001.gif@01D2FC21.354ACAA0]

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada
Office: 416 943 3554 | Cell: 416 888 6997 |
leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
Fax: 416 943 3767 | EY/Comm: 1657762

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CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
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Cc: Jack, Shannon (TBS) <Shannon.Jack@ontario.ca>, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>, Suzie Gignac <suzie.r.gignac@ca.ey.com>
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Regards,
Lee Anne

--
[cid:image001.gif@01D2FC21.354ACAA0]

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada
Office: 416 943 3554 | Cell: 416 888 6997 |
leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
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Re_ UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; HAHN PARKER Janet -TREASURY [j.hahnparker@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; LAURETA LAPIRA May -TREASURY [may.lapira@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Feldman, Michael [mfeldman@torys.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; ian.benaiah@rbccm.com [ian.benaiah@rbccm.com]; Khan, Nur (nur.khan@rbccm.com) [nur.khan@rbccm.com]; brent.r.taylor@rbccm.com [brent.r.taylor@rbccm.com]; katrina.niehaus@gs.com [katrina.niehaus@gs.com]; brian.delaney@gs.com [brian.delaney@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Persad, Nicole [Nicole.Persad@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
Subject: Re: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 18:21:38
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201712223905031~201711212221580000~Z~011799F4E725CFB7D7A055BB894EB261View the original item

Yes 5:45 works. We are already gathered and are printing copies of your mark-ups for the group.

Sent from my iPhone

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th

Attachments:
imagec61160.JPG (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201712223905031~201711212221580000~Z~011799F4E725CFB7D7A055BB894EB261&AttachmentId=1imagec61160.JPG

RE_ .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE:
Date: Tuesday, March 21, 2017 14:14:09

Thanks. That's what I thought. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 21, 2017 1:27 PM
To: Petsche, Nadine (TBS)
Subject:

7. Establish or amend the mission or mandate. I believe the answer is yes. The trust is established to achieve the objective of the TPA. I believe the answer should always be yes for a trust. That being said, I am not sure that this alone is sufficient to say that the Province has control.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE:
Date: Monday, March 20, 2017 09:58:02

---

thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March-20-17 9:57 AM
To: Petsche, Nadine (TBS)
Subject:

.20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

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RE_ .rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE:
Date: Thursday, April 06, 2017 09:52:04
Attachment 1: image001.gif

Which meeting would that be on Friday?

From: Petsche, Nadine (TBS)
Sent: April 5, 2017 4:23 PM
To: Lee Anne Probert
Cc: Virani, Shyrose (TBS)
Subject: RE:

Hi Lee Anne. The meeting has now been deferred until Friday afternoon. I will forward a copy of the invite. We can chat tomorrow. N

From: Petsche, Nadine (TBS)
Sent: April 5, 2017 4:01 PM
To: Lee Anne Probert
Subject: Re:

Hi Lee Anne. Sorry that I haven't been available. My afternoon is pretty crammed. There is a call tomorrow morning that I will forward to you so that you can call in (for observation purposes). N

From: Lee Anne Probert

Sent: Wednesday, April 5, 2017 3:09 PM

To: Petsche, Nadine (TBS)

Subject:

Hi Nadine,

Wondering if you have a couple of minutes to chat.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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image001.pdf

RE_ .rtf

From: Blake Langill [blake.w.langill@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE:
Date: Thursday, December 01, 2016 11:53:02

Sorry about that Nadine.

Tomorrow I'm available until 10am and Suzie is available from 9am to 12:30. If my timing is an issue, definitely not a problem if you and Suzie can speak without me.

We've got a few types of templates and easy enough to pull one together for you, but maybe part of the call can be discussing the types of requests you are envisioning and then based on what those are we'll send along something that fits (or send along a couple of templates if the nature of the potential requests might be varied).

Thanks.
-blake

--

Blake Langill | Partner

Ernst & Young LLP
222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada
Office: +1-416-943-3556 | blake.w.langill@ca.ey.com
Website: http://www.ey.com
Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, December 01, 2016 9:48 AM
To: Blake Langill <blake.w.langill@ca.ey.com>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: Re:

Hi Blake.
Today doesn't look like it will work. Perhaps we can schedule some time for tomorrow. Shyrose (copied), can help if you provide your availability info. Also, is there a template you can share that would help with documenting specific requests over the course of the service term? Thanks in advance.
Nadine
From: Blake Langill
Sent: Thursday, December 1, 2016 9:42 AM
To: Petsche, Nadine (TBS)
Cc: Suzie Gignac
Subject:

Hi Nadine.

Sorry I missed you yesterday. What's your time like today?

Suzie is available from noon to 4:30 and I'm available until 11:30 and then between 2:30 and 4:30.

Cheers.
-blake
--
[cid:image001.gif@01D24BB7.1D89BC70]

Blake Langill | Partner

Ernst & Young LLP
222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada
Office: +1-416-943-3556 | blake.w.langill@ca.ey.com<mailto:blake.w.langill@ca.ey.com>
Website: http://www.ey.com<http://www.ey.com/>
Assistant: Amanda Craig | Phone: +1-416-943-4581 |
amanda.craig@ca.ey.com<mailto:amanda.craig@ca.ey.com>

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RE_ Addressee.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
CC: Manno, Christina C [cmanno@kpmg.ca]
Subject: RE: Addressee
Date: Friday, March 16, 2018 12:11:15

Yes, in the meantime, can you please provide me with email copy as well.

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 16, 2018 12:05 PM
To: Virani, Shyrose (TBS)
Cc: Manno, Christina C
Subject: Addressee

Hi Shyrose,

The invoice is ready to go. Should it be addressed to Mark and the following address?

Mark Donaldson, CPA, CMA

Director, Accounting Policy and Financial Reporting

Office of the Provincial Controller Division, Treasury Board Secretariat

7 Queen's Park Cres, 2nd Floor

Toronto, Ontario

M7A 1Y7

416-325-8027

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

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RE_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
CC: Sermat-Harding, Kaili (ENERGY) [Kaili.Sermat-Harding@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; RAND, PAUL [PAUL.RAND@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Saturday, March 18, 2017 17:05:34
Attachment 1: Trusts Guidance.pdf

Hi Emma.
With regards to the second item, please see the last Q&A on the Trust guidance which indicates that the item should not be contentious from a control perspective. That said, if you want to minimize risks, you could refer to the direction as an 'expectation' which would be similar to what we did when funds per provided to municipalities under the Investing in Ontario Act.
Nadine

-----Original Message-----
From: Schwab-Pflug, Emma (ENERGY)
Sent: March-18-17 4:58 PM
To: ASHBOURNE, STEPHEN
Cc: Sermat-Harding, Kaili (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); RAND, PAUL; PRESTAGE, JA; Petsche, Nadine (TBS)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Stephen,

We've had two questions come up following the call this afternoon, and would appreciate if you could consider tomorrow as you finalize the next version of the documents:

First, we would like to change tack with the charities annex/list and instead simply establish that the Trust would consult with the Ontario Energy Board to identify charities. This will allow an up to date consideration of which charities to flow money to, based on their need/function at that point in time, and could also assist with Trustee decision-making (vs. a long list).

Second, this is a hypothetical question for now, but the government may wish to promote the program, through its own marketing or further through direct branding, e.g. putting the Trillium logo on materials sent to beneficiaries. Would this need to be established in either/both documents (TPA and Deed)? Can it be established without having control implications? Nadine, it would be helpful if you could weigh in on this.

Thank you again,
Emma

-----Original Message-----
From: Syed, Usman (ENERGY)
Sent: March-18-17 12:37 PM
To: ASHBOURNE, STEPHEN
Cc: Sermat-Harding, Kaili (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); RAND, PAUL; PRESTAGE, JA
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Steve - thanks for your timely response.

I've discussed with the team and we have no desire to change the language in the Deed with regard to rules for the Advisory Committee (AC). However, we will be increasing the number of AC members to 7 in total. Thanks...

- Usman

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 17, 2017 9:31 PM
To: Syed, Usman (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

It's a bit of a conflict to be part of a process that appoints one or more of its members, so the optics are poor. We have not set rules for the AC, so I suppose we could specifically provide for it if it's important to you. Steve

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

On Mar 17, 2017, at 9:27 PM, Syed, Usman (ENERGY)
<Usman.Syed@ontario.ca<mailto:Usman.Syed@ontario.ca>> wrote:

Hi Stephen, a question has come up with regards to the Advisory Committee members that I am hoping you can help address:

Would an advisory committee member would be precluded from being a trustee? Is there any provision in the draft declaration that would prevent this (I am not aware of any such provision), I think the answer is no.

I think the answer is that an advisory committee member could be considered by the committee as a potential trustee, but it would be up to the committee to decide/recommend.

Hoping you can clarify, thanks...

- Usman
From: Schwab-Pflug, Emma (ENERGY)
Sent: Friday, March 17, 2017 6:40 PM
To: ASHBOURNE, STEPHEN; RAND, PAUL; PRESTAGE, JA
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Cook, Cory (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Stephen,

Please find comments from Osler and KPMG attached (PDFs). We have incorporated these with comments from our Provincial Controller's Office ("OPC", Nadine cc'd) in the Word versions, also attached.

Many outstanding comments relate to control issues that will need to be resolved by OPC and KPMG. There will be a call scheduled tomorrow to resolve. We have requested that Blakes be invited.

One of the remaining policy/legal aspects is Osler's recommendation that the principles be allowed to be

amended by the Trust, including to account for refinements in the purpose over time. We think this is reasonable and are comfortable with allowing the Trust to amend over time, with input from the Province and with the Province kept informed of amendments.

Finally, there was a placeholder for a list of charities to serve as Residual Beneficiaries. Find attached a list of agencies who help deliver energy support programs in the province. A list is maintained by the Ontario Energy Board (the province's energy regulatory) and we have included only those attached who are CRA-listed charities. We will be reviewing this further on Monday and may come back with slight refinements, but would suggest incorporating as is for now.

As noted on the call today, to meet timelines, our aim would be to send the TPA and Declaration to Computershare by end of day Monday. Could you advise us by early Monday if you see this as feasible? Again, we appreciate your continued efforts on these challenging timelines.

If you have any questions over the weekend, please email.

Thank you again,
Emma

Emma Schwab-Pflug
Acting Manager
Energy Conservation Policy Unit
Conservation and Renewable Energy Division Ontario Ministry of Energy

Emma.Schwab-Pflug@Ontario.ca<mailto:Emma.Schwab-Pflug@Ontario.ca><mailto:Emma.Schwab-Pflug@Ontario.ca>
office: 416-212-7006 | cell: 416-931-3905

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-17-17 1:41 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>; Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma et al:

See comments from Osler and KPMG attached for your review in advance of our 3PM call.

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
483 Bay St, Toronto, ON
(O) 416-345-1375

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From: PHILLIPS Alexandra
Sent: Friday, March 17, 2017 11:29 AM
To: 'Schwab-Pflug, Emma (ENERGY)'
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:
Possible to move up the call to earlier today?

Secondly, we drafted a timeline for phase 2 when the funds have flowed to CS and we need to consult with the LDC community and revise the Declaration of Trust. See attached and let me know if you have any concerns.

Thirdly, you've identified a Board of Trustees to select the trustees following CS. Who are you suggesting is on the Board?

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
483 Bay St, Toronto, ON
(O) 416-345-1375

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From: Schwab-Pflug, Emma (ENERGY)
[mailto:Emma.Schwab-Pflug@ontario.ca]<mailto:[mailto:Emma.Schwab-Pflug@ontario.ca]>
Sent: Thursday, March 16, 2017 6:58 PM
To: PHILLIPS Alexandra
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Alex, thank you, that's great news that all is in order for tomorrow. We look forward to speaking at 3 PM. Charlotte (cc'd) will set up a conference line tomorrow morning.

Have a good night also!
- Emma

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>

[mailto:Alexandra.Phillips@HydroOne.com]<mailto:[mailto:Alexandra.Phillips@HydroOne.com]>
Sent: March-16-17 6:55 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>; Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>; Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:

We are set to meet via telecon tomorrow at 3pm and our draft administrative agreement will be sent to you tomorrow morning.

I will send all outstanding info tomorrow in advance of our call.

Have a great night!

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 4:20 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca<mailto:Emma.Schwab-Pflug@ontario.ca><mailto:Emma.Schwab-Pflug@ontario.ca>> wrote:
Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY);

Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>;
Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>;
Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>> wrote:
Thanks Emma. I am checking on exact timelines and will Alex Phillips Manager, External Relations Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

This email and any attached files are privileged and may contain confidential information intended only for the person or persons named above. Any other distribution, reproduction, copying, disclosure, or other dissemination is strictly prohibited. If you have received this email in error, please notify the sender immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.

On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca<mailto:Emma.Schwab-Pflug@ontario.ca><mailto:Emma.Schwab-Pflug@ontario.ca>> wrote:
Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc:
Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>;
Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>;
Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

This email and any attached files are privileged and may contain confidential information intended only for

the person or persons named above. Any other distribution, reproduction, copying, disclosure, or other dissemination is strictly prohibited. If you have received this email in error, please notify the sender immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.

<2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx> <2017-03-16-CLEAN TPA_Draft_Afund v2.docx> <2017-03-16-TRACK TPA_Draft_Afund v2.docx>
<2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

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[cid:image7c2c12.GIF@5af7c711.449be4a3]

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
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Trusts Guidance.pdf

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust (‘certainty of intention’), certainty of subject-matter of the trust (“certainty of subject matter”) and the objects of the trust must be certain (‘certainty of objects”). There are generally two different types of trust, a trust in which the objects are the “beneficiaries” and trust in which the objects are a “purpose” (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:

- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:

- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees

- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any

individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

Appendix

Trusts
Questions and Answers

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed*

as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

***Question**: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

***Question:** Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

***Answer:** Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

***Question:** Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
***Answer:** Yes.*

***Question:** Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
***Answer:** Yes.*

***Question**: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
***Answer:** Yes*

***Question:** Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
***Answer:** The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

***Question:** Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
***Answer:** Yes*

***Question:** Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*

Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

RE_ Affordability Fund - Revised Documents.rtf

From: Petsche, Nadine (TBS) []
To: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
Subject: RE: Affordability Fund - Revised Documents
Date: Tuesday, March 21, 2017 22:32:20
Attachment 1: Compare - Declaration of Trust - Osler Comments March 21npp.pdf
Attachment 2: Compare - TPA - Osler Comments March 21npp.pdf

Hi Emma and Stephen.

I've reviewed Osler's suggested edits to the documents and don't see any accounting-related issues. My comments are attached for your info. Not sure if it's just me (I assume so), but I'm finding it a bit difficult to follow the co-existence of the two terms Administrative Services Agent and Implementation Agent.

Talk to you tomorrow morning.

Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-21-17 7:12 PM
To: Petsche, Nadine (TBS)
Subject: FW: Affordability Fund - Revised Documents

Nadine, to call again on your expertise, if you have comments on Hydro One's revisions, can you share them with Blakes and Ministry at same time?

Many thanks,

Emma

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-21-17 7:07 PM
To: 'ASHBOURNE, STEPHEN'; PRESTAGE, JA; RAND, PAUL
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: FW: Affordability Fund - Revised Documents

Stephen,

See below and attached.

As per emails between Usman and Nadine this evening, the Ministry is comfortable with including Hydro One as an admin agent to the Trust. However, Hydro One must be clearly identified as the **interim** admin services provider, to be confirmed by the Trustee (preferably prior to March 31).

Can you also advise, after the TPA/Deed revisions, whether you would recommend revisions are needed to the Administrative Services Agreement (also attached).

I will be available by email this evening if any questions.

Thanks,

Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-21-17 6:48 PM
To: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY)
Cc: Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Affordability Fund - Revised Documents

Hi Kaili, Usman and Emma:

Please find attached the following docs for review and consideration:

1. Declaration of Trust (blacklined to Blakes' draft dated March 20)

2. TPA (blacklined to Blakes' draft dated March 20)

3. Administrative Services Agreement

Let's set up a time tomorrow morning to discuss. Further to our conversation, I've flagged that the Office of the Provincial Controller may be back in touch with KPMG on the proposed Administrative Services Agreement.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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Compare - Declaration of Trust - Osler Comments March 21npp.pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

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

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

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

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) "***Final Distribution Date***" means the earlier of (i) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (ii) •, 20[23].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Headings and Table of Contents

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

1.3 References

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

1.4 Number and Gender

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

1.5 Governing Law

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

1.6 Severability

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

1.7 Reference to the Trust and the Trustee

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

1.8 Defect in Appointment

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

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

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

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

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

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

2.2 Name of the Trust

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

2.3 Location

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

2.4 Fiscal Year

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

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

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

3.2 Amount of Distributions to Primary Beneficiaries

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

3.3 Distributions to Residual Beneficiaries

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

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

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

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including ~~any~~the Administrative Services Agreement, any Implementation Agreement and any License Agreement. **[NTD: License Agreement is not defined]**

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

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

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for

cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

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

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

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

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

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

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

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

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

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

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

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

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

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's [schedule of fees delivered as of the date

hereof] as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

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

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

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

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

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to ~~one or more~~the Administrative Services Agent under the Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related ~~Administrative Services~~Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except

if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable ~~Administrative Services~~Implementation Agreement.

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

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

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

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No

property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

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

5.4 Funds of the Trustee

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

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of ~~any~~the Administrative Services Agent or any Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including ~~any~~the Administrative Services Agreement or any Implementation Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

~~As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the~~The Persons identified ~~by~~in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (~~once constituted,~~ the "**Advisory Committee**"). ~~As soon as practicable thereafter, the~~The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. [Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,] the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and

administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

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

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

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

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

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social

services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

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

5.9 Confidentiality

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

5.10 Vesting in Successor Trustee

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

5.11 Execution of Instruments

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

to the terms and conditions of the Administrative Services Agreement or by an Implementation Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of ~~such Administrative Services~~an Implementation Agreement, shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

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

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof~~; [provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to* the Permitted Delegations Annex*.]~~. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

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

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

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

(d) add additional or replace existing Trustees;

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

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

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

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

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

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

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

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

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

7.2 Termination and Distribution of Assets

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

7.3 Distribution of Assets on Final Distribution Date

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

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

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

[Signature Page Follows]

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

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

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

1. Identification of Primary Beneficiary Payees

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

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

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

(iii) it confirms that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

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

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

2. Eligible Measures

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

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

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

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

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

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

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

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

3. Promotion of the Program

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

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary Beneficiaries.

4. Conduct of the Trust and the Program

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

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

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

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

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

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

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

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

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

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

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

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

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

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

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

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

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

Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

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

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

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

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

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

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

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

Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

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

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

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

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

in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

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

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

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

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

1. The identity of such Primary Beneficiary Payee; and

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

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

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

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

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a

third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

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

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

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

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

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

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its ~~Administrative Services~~Implementation Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**

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

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

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

e. **Standard of Care**

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

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

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

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the ~~Administrative Services~~Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's

Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the ~~Administrative Services~~Implementation Agreement.

g. **Representations**

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

h. **Indemnification**

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

TRUSTEE REPLACEMENT ANNEX

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

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

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

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

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

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

   c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

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

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

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

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

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

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

Compare - TPA - Osler Comments March 21npp.pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

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

B E T W E E N :

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

(the "Province")

- and -

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

(~~together with its successors and assigns,~~Affordability Fund Trust being the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

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

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

CONSIDERATION

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

ENTIRE AGREEMENT

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

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

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

COUNTERPARTS

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

AMENDING THE AGREEMENT

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

ACKNOWLEDGEMENT

The Recipient:

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

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

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

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

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

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

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

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

(b) words in one gender include all genders;

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

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

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

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

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

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

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

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the ~~Affordability Fund Trust~~Recipient was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"**Implementation Agents**" has the meaning given to such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the ~~Affordability Fund Trust~~Recipient pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the ~~Affordability Fund Trust~~Recipient; and

(b) the ~~Affordability Fund Trust~~Recipient is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient ~~represents, warrants and~~ covenants that it ~~has, and~~ will develop and maintain~~,~~ in writing ~~for the period during which~~until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on ~~the later of~~ the Expiration Date ~~and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the ~~Declaration of Trust (beyond the "~~Final Distribution Date~~"~~ (as defined in the Declaration of Trust) and time for termination~~, each as specified or determined thereunder)~~ of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend ~~the Declaration of Trust~~such date to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the ~~Trustee~~Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the ~~Trustee~~Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion ~~as Trustee~~under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in

furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agent and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes ~~and control~~ to ensure that the Program and the use, ~~apply~~application and ~~distribute~~distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the ~~Trust~~Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in

connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 Insurance. The Recipient has made enquiries to confirm that insurance policies of the type contemplated in Schedule C are generally available in Canada. **[NTD: This will not be true at the time of signing. Insurance is an "expectation of the Province" prior to distribution of Funds under Schedule C]**

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the ~~Recipient~~Trustee has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice ~~p~~Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "**Notice Period**").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice ~~p~~Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

~~**12.2 Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.~~

[NTD: the trust is already giving all Assets back. It cannot pay "interest"]

12.2 ~~**12.3**~~ **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.3 ~~**12.4**~~ **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	~~Later of [April 30, 2019] and the Final Distribution Date (as defined in~~The date on which Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~)~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the ~~Provinces~~Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. ~~An administrative services agreement~~The* Administrative Services *Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and ~~an~~* ~~Administrative Services~~ *~~Agent providing for the administrative~~Hydro One Limited under which Hydro One Limited shall provide specified administrative ~~and other~~ services to and on behalf of the Trustee.

3. One or more Implementation Agreements (as defined in the Declaration of Trust) will have been entered into between the Recipient and Implementation Agents providing for the services necessary for the Recipient to perform its obligations herein and execute the Project.

4. ~~3.~~ Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

5. ~~4.~~ The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee

in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the ~~Fund~~Recipient, including any administrative expenses of the ~~Recipient (or any administrative services agents~~Administrative Services Agent or any Implementation Agent or other agents retained by the Recipient~~)~~, relating to the establishment of the ~~Affordability Fund Trust~~Recipient and the execution of the Project and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the ~~Trust~~Recipient and the execution of the Project (including any reimbursable expenses incurred by ~~any~~the Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the ~~Affordability Fund Trust~~Recipient.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the ~~Fund~~Recipient.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[1]

[1] **Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.**

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[2] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

[2] NTD: Confirm and conform frequency references.

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or ~~any~~the Administrative Services Agent of any Implementation Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

12888010.11

RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:29:19
Attachment 1: image001.gif

Thanks Stephen. Looks good.

Nadine

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

image001.pdf

Blakes

RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Morag Abraham [Morag.Abraham@computershare.com]
To: Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]
CC: Sermat-Harding, Kaili (ENERGY) [Kaili.Sermat-Harding@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Alexandra.Phillips@HydroOne.com [Alexandra.Phillips@HydroOne.com]; Daniel.Levitan@HydroOne.com [Daniel.Levitan@HydroOne.com]; GILL Spencer [Spencer.Gill@HydroOne.com]; An, Tai (ENERGY) [Tai.An@ontario.ca]; Gounden, Pratima (ENERGY) [Pratima.Gounden@ontario.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Thursday, March 23, 2017 18:51:08
Attachment 1: image001.gif
Attachment 2: Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf
Attachment 3: Declaration of Trust dtd Mar 23 17.executed.pdf
Attachment 4: Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

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Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]
Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

· Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

· We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

· Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

· Our Deputy Minister will then sign on three printed copies.

· Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham

Sent: Wednesday, March 22, 2017 5:52 PM
To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits,

catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)

Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****
Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

****

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Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf

Computershare

23/03/2017
6:18:29PM

Transaction Statement

From: 23 March, 2017 **To :** 23 March, 2017

Account Name : Affordability Fund Trust **Account Nbr :** 1000039573

Trust Officer : Josephine Chu **Currency Code:** CDN

Transaction Date	Entry Code	Description	Debit	Credit	Balance
		Period Opening Balance :			0.00
23/03/2017	TTI	INTERNAL FUNDS MOVEMENT--TO ESTABLISH THE FUND--chuj1		$100.00	$100.00
		Total Period Debits :	$0.00		
		Total Period Credits :		$100.00	
		Period Closing Balance :			$100.00

Declaration of Trust dtd Mar 23 17.executed.pdf

DECLARATION OF TRUST

Made as of March 23, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March 23, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March 23, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the

purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions

of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance.*** The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to the accountability principles set out in Schedule B to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly

apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name: Morag Abraham
Title: Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Associate Trust Officer

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for arrangements of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a

written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors) which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the service area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to adherence with the accountability principles set out in Schedule B to the Principles Annex. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Implementation Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Brian Bentz, President and Chief Executive Officer at Alectra

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 23rd day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

_____
Date

by: _____
Name: Serge Imbrogno
Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

March 23, 2017
Date

by: Morag Abraham
Name: Morag Abraham
Title: Corporate Trust Officer

MARCH 23, 2017
Date

by: _____
Name: Ann Samuel
Title: Associate Trust Officer

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Timing of Distributions to Beneficiaries.** The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 **Use of Funds and Project.** The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period (as defined in section 11.3) applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any

provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the Assets (as defined in the Declaration of Trust) for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention: Manager, Corporate Trust Services** **Address: 100 University Ave., 11th Floor, Toronto, Ontario, M5J 2Y1** **Email: CorporateTrust.Toronto@computershare.com**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the the accountability principles set out in Schedule B to the Principles Annex. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

Except as otherwise defined herein, capitalized terms used in this Annex A shall have the respective meanings given to such terms in the Declaration of Trust.

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may

provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of

Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:55:33
Attachment 1: image001.gif

Thanks. He would have received the comment around the same time as he was sending the revised version. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:54 PM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Still need to amend schedule D in the TPA.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 4:29 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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image001.pdf

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RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:29:19
Attachment 1: image001.gif

Thanks Stephen. Looks good.

Nadine

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

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J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

image001.pdf

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RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Friday, March 24, 2017 10:12:01
Attachment 1: image001.gif

Merci. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 10:08 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, March 24, 2017 9:52 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

No problem at all. I'm starting my high level summary based on the following outline…

1) PSAB trust guidance (limited)

2) OPCD Guidance on trusts (controlled vs. non-controlled)

3) PS 1300 assessment

I think we should be fine as a line of defence, especially based on last week's discussion at the ADG.

n

From: Picard, Michel [mailto:mpicard@kpmg.ca]

Sent: March 24, 2017 9:50 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Soon!

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, March 24, 2017 9:48 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 8:40 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Will send mu comments on your analysis around 9:30am.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:14 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Michel.

I just wanted to share the final signed docs. Thanks again for all of your help!! I'll be updating my control analysis again this evening. If you have any comments on the revised draft I sent you yesterday, it would be much appreciated.

I attended the PSAB ADG last week, and I've been pondering some of the

discussion. It may influence the final documentation on the accounting, once the control analysis is complete. Would welcome a chat with you on that front when you have some time.

Talk soon,

Nadine

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 6:51 PM
To: Syed, Usman (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]

Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

· Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

· We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

· Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

· Our Deputy Minister will then sign on three printed copies.

· Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham
Sent: Wednesday, March 22, 2017 5:52 PM
To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

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There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****
Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

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image001.pdf

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RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Friday, March 24, 2017 10:07:56
Attachment 1: image001.gif
Attachment 2: Control Assessment_Affordability Fund Rev Mar 23 michel.doc

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, March 24, 2017 9:52 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

No problem at all. I'm starting my high level summary based on the following outline…

1) PSAB trust guidance (limited)

2) OPCD Guidance on trusts (controlled vs. non-controlled)

3) PS 1300 assessment

I think we should be fine as a line of defence, especially based on last week's discussion at the ADG.

n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 9:50 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Soon!

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]

Sent: Friday, March 24, 2017 9:48 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 8:40 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Will send mu comments on your analysis around 9:30am.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:14 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Michel.

I just wanted to share the final signed docs. Thanks again for all of your help!! I'll be updating my control analysis again this evening. If you have any comments on the revised draft I sent you yesterday, it would be much appreciated.

I attended the PSAB ADG last week, and I've been pondering some of the discussion. It may influence the final documentation on the accounting, once the control analysis is complete. Would welcome a chat with you on that front when you have some time.

Talk soon,

Nadine

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 6:51 PM
To: Syed, Usman (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]
Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

· Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

· We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

· Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

· Our Deputy Minister will then sign on three printed copies.

· Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham
Sent: Wednesday, March 22, 2017 5:52 PM

To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN

Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****
Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

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Control Assessment_Affordability Fund Rev Mar 23 michel.pdf

~~BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)~~

REVISED Control Assessment of Affordability Fund Trust ~~(Rev. Mar 23, 2017)~~ for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust (the Affordability Fund or Trust) be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

The Affordability Fund Trust is not controlled by the Province based on the analysis in Appendix I. The only two control criteria assessed as indicating potential control, based on the ~~draft~~ TPA and Trust Declaration were the Province's ability to both establish or amend the mission or mandate of the organization and the establishment of borrowing or investment limits or restricting the organization's investments.

The government established the Affordability Fund to support the Ministry of Energy's rate reduction program and the Trust documents restrict the nature of investments in which the Trust can invest to maintain liquidity and stewardship over the funds, these two criteria are met. Although the Province established the Affordability Fund, it does not have the ability to amend the mandate of the Trust but has a protective right over the amendments.

With regards to the government's ability to appoint the governing body of the Trust, as at March 31st, the Trustee and the Advisory Committee ~~will~~ have been appointed through the establishment of the Trust document, ~~but~~ and the Province does~~will~~ not control either party nor will it be able to change either party unilaterally. The government will not control the selection of the Replacement Board of Trustees in accordance with the Trustee selection process.

The Trustees will have unfettered control over the assets and decisions of the Trust, despite the Province's expectation that the Trust consider the principles listed in the Principles Annex and the suggested eligibility measures listed in the Permitted Delegations Annex.

BACKGROUND

The Ministry of Energy ~~plans~~ has transferred ~~to transfer~~ $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills].

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on ~~factors~~ principles and indicative eligible measures listed in Annex A of the Declaration of Trust [and could include customers in frequent arrears or facing disconnection]. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans ~~to~~ entered in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent

Commented [m1]: I know the criteria speaks to both but dopes the province has the ability to amend or only to establish? I believe it is only to amend the mandate. If this is correct, it should soften the yes.

Commented [m2]: Does it have a right to change at all?

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Advisory Committee. The Ministry of Energy ~~anticipates~~ entereding into TPA with Computershare and flowing the approved funding ~~prior to March 31st~~on March _, 2017.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "Selection Factors"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using administrative services agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One's distribution division) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles set out in the Declaration of Trust (and ~~agreed~~ indicated by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province~~, including Hydro One~~.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's protective right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles,** to be considered in the exercise of its discretion**,** ~~will be~~is set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain ~~Administrative~~ Implementation ~~Services~~ Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend ~~administrative services~~implementation agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned ~~administrative services~~ implementation agreements, the Permitted Delegation Annex also outlines certain expected components for the Trust to consider for inclusion in the implementation ~~administrative services~~ agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. The Annex is subject to the Trustee's overall discretion and the Trustees are not bound to use the guidance provided.

CONTROL ANALYSIS

Commented [m3]: I believe the entire document should be analyzed after the signature of the transaction.

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Commented [m4]: Is it done already?

Commented [m5]: Not sure they have been appointed as implementation agent in the Trust.

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In accordance with PSAB, “the Government Reporting Entity should comprise the organizations that are controlled by the government” (PS 1300.07). PSAB defines control as “the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities” (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government’s public policy objectives.

PSAB’s “indicators of control” are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province’s control over the Affordability Fund Trust:

1. ~~Draft~~ Trust Declaration ~~(March 20 5:30 pm)~~, including related schedules
2. ~~Draft~~ Transfer Payment Agreement ~~(March 20 5:30 pm)~~
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

The government’s intention not to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties is clearly communicated in the TPA and the Trust Declaration. In particular, Schedule A, Section 1.1(g) (Interpretations) of the TPA includes the following:

it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term “control” is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

Appendix I shows the detailed analysis of the Affordability Fund Trust based on a consideration of the of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (more persuasive) indicators (CICA PS 1300.18):		
i. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. As at March 31st, Trustee will hold funds transferred and government will not have power to remove Original Trustee nor to have access to the funds. • The government ~~will~~ does not control the Original Trustee or~~,~~ the Advisory Committee, and will not control~~or~~ the Replacement Board of Trustees.	X
ii. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government ~~will~~ does not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). • At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government ~~will~~ does not have any exposure to losses. Trust Declaration (sec. 4.2 extracts) ***(c)©Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(e)€Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing. ***(o)Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	"**Declaration of Trust**" means the declaration of trust made as of March 23[~~•~~], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2. **20.2 Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed. **The right of the Province to consent is a protective right only.** **Trust Declaration:** **6.1Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements **Principles Annex In Trust Declaration:** The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust: Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the ~~Administrative Services~~Implementation Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). **Governance in the TPA.** The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Reports required pursuant to Article 7.0. Section 5.8, Rules and Procedures of the Trust Declaration provides further expectations which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. With regards to the control criteria's suggestion of dissolving the organization and accessing assets, it should be noted that there are expected to be no assets at the end of the Trust's existence that could be returned back to the Province. The termination of the Trust at the end of the program and following the Final Distribution Date will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to dissolve the Trust. **<u>Trust Declaration</u>** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **TPA References** **11 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). **11.3 Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of: (a) the particulars of the Event of Default; and (b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period"). No right to access assets following Final Date of Distribution: **Declaration of Trust** 3.3Distributions to Residual Beneficiaries Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee by the Replacement Board of Trustees is described in section 5.7 of the Trust Declaration. Although the Original Trustee (Computershare) may have been selected by the Province, and the Advisory Committee members were listed on the Trust Declaration, neither the Original Trustee nor the Advisory Committee will be controlled by the Province. It is relevant to note that PSAB also provides the following guidance with regards to government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Through an agreement with the Trustee (Computershare), it is the entity as settlor and as trustee which ~~will~~ has established the trust. Once established, the Province's Role, under section 4.4 of the TPA is limited to providing funds to the T~~t~~rust. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration, Section 1.1 Definitions (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). ***4.2*** (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	The Trust Declaration and the TPA are not intended to interfere with the discretion of the Trust to establish or amend its own financial and operating policies. However, the Province does provide non-compulsory Principles which are expected to be considered by the Trustee in executing its administration of the Trust. In addition to the guiding Principles, ~~the Declaration also includes a The~~ theTrust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs. These sections are descriptions of matters that would typically be expected in an ~~Administrative Services~~Implementation Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreements). **Section 4.2 of the Declaration lists the Enumerated Powers of the Declaration, including:** The Trustee shall have the following specific powers and authorities: a) *Transfer Payment Agreement.* b) *Contracts and Undertakings.* c) *Power to Own, Hold and Manage. .* d) *Power to Invest in Eligible Investments.* e) *Power to Dispose of Assets.* f) *Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.* g) *Power to Delegate and to Appoint Agents, etc.* h) *Power to Operate Accounts.* i) *Power to Collect, etc.* j) *Power to Obtain Insurance*. k) *Power to Pay Trustee's Fees.* l) *Power to Pay Taxes.* m) *Power to Appoint Auditors.* n) *Form of Accounts.* o) *Title to Assets.* p) *Delegation of Discretion*. q) *Additional Powers.* None of the above noted powers are restrictive or suggest that the government is controlling the activities of the Trust. The TPA Extract includes the following reference which does not conflict the non-controlled nature of the Trust and/or are consistent with OPCD's guidance on One-Time Transfer Payments or Trust Guidance reviewed previously with the Office of the Auditor General: 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Payment Agreement, including to: i. act prudently and in furtherance of the Purpose; ii. report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program; iii. comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; iv. return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS (TPA)** **5.2 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Both the TPA and the Trust Declaration include a PRINCIPLES ANNEX** The Trustee is expected to have regard to the Principles, but shall not be specifically bound by the principles in applying its discretion in relation to the administration of the Trust.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Friday, March 24, 2017 09:51:36
Attachment 1: image001.gif

No problem at all. I'm starting my high level summary based on the following outline…

1) PSAB trust guidance (limited)

2) OPCD Guidance on trusts (controlled vs. non-controlled)

3) PS 1300 assessment

I think we should be fine as a line of defence, especially based on last week's discussion at the ADG.

n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 9:50 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Soon!

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, March 24, 2017 9:48 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]

Sent: March 24, 2017 8:40 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Will send mu comments on your analysis around 9:30am.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:14 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Michel.

I just wanted to share the final signed docs. Thanks again for all of your help!! I'll be updating my control analysis again this evening. If you have any comments on the revised draft I sent you yesterday, it would be much appreciated.

I attended the PSAB ADG last week, and I've been pondering some of the discussion. It may influence the final documentation on the accounting, once the control analysis is complete. Would welcome a chat with you on that front when you have some time.

Talk soon,

Nadine

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 6:51 PM
To: Syed, Usman (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]
Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

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Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

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I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

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Thank you,

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Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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J.A.

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Partner
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Dir: 416-863-2955

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image001.pdf

Blakes

RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Friday, March 24, 2017 09:48:07
Attachment 1: image001.gif

---

thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 24, 2017 8:40 AM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Will send mu comments on your analysis around 9:30am.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:14 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

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image001.pdf

Blakes

RE_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

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To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Friday, March 24, 2017 08:39:35
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CC: Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust
Date: Wednesday, March 22, 2017 16:12:15
Attachment 1: image001.gif

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Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March 22, 2017 3:32 PM
To: ASHBOURNE, STEPHEN; Petsche, Nadine (TBS); PRESTAGE, JA
Cc: Syed, Usman (ENERGY)
Subject: Re: Affordability Fund Trust

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Thanks,

Emma

Sent from my BlackBerry 10 smartphone on the Rogers network.

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Sent: Wednesday, March 22, 2017 3:12 PM

To: Petsche, Nadine (TBS); PRESTAGE, JA

Cc: Schwab-Pflug, Emma (ENERGY)

Subject: RE: Affordability Fund Trust

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Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 3:07 PM
To: PRESTAGE, JA; ASHBOURNE, STEPHEN
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: RE: Affordability Fund Trust

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To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
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RE_ Affordability Fund Trust.rtf

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To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust
Date: Wednesday, March 22, 2017 16:05:43
Attachment 1: image001.gif

Thanks.

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:02 PM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 3:58 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Affordability Fund Trust

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To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Affordability Fund Trust
Date: Wednesday, March 22, 2017 16:02:11
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To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Affordability Fund Trust
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Subject: RE: Affordability Fund Trust
Date: Wednesday, March 22, 2017 15:06:37
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Cc: Schwab-Pflug, Emma (ENERGY)

Subject: RE: Affordability Fund Trust

We thought that was where the conversation landed, with you saying (1) you (and I believe Michel) can live with it as the only o/s bad fact and (2) Kylie saying she wanted to think about the relevant timeframe. I might be wrong though … Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 3:07 PM
To: PRESTAGE, JA; ASHBOURNE, STEPHEN
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: RE: Affordability Fund Trust

Stephen,

Please confirm if additional edits (e.g. 3.3 on extension) was supposed to be edited as well? Nadine

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March 22, 2017 2:48 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653
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image001.pdf

Blakes

RE_ Affordability Fund Trust.rtf

From: Petsche, Nadine (TBS) []
To: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: RE: Affordability Fund Trust
Date: Wednesday, March 22, 2017 15:06:37
Attachment 1: image001.gif

Stephen,

Please confirm if additional edits (e.g. 3.3 on extension) was supposed to be edited as well? Nadine

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March 22, 2017 2:48 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
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RE Any feedback on IFRS 14_.pdf

From:	Virani, Shyrose (TBS)
To:	alec.cheng@opg.com; Petsche, Nadine (TBS); Patel, Bharat (TBS)
Subject:	RE: Any feedback on IFRS 14?
Start:	September 24, 2015 1:30:00 PM
End:	September 24, 2015 2:00:00 PM
Location:	Alec to call Nadine at 416-325-8027

----- Original Message -----

From: CHENG Alec -FIN & C CTRL [<mailto:alec.cheng@opg.com> mailto:alec.cheng@opg.com]

Sent: Wednesday, September 23, 2015 08:52 AM

To: Petsche, Nadine (TBS)

Subject: RE: Any feedback on IFRS 14?

Nadine,

Michel did reach out to me. I have provided my comments and experience.

Do you have time for a quick call today to understand the requests and objectives around discount rate?

I am available from 10:30 to 11, 2 to 3:30 or after 4:30.

Alec

-----Original Message-----

From: Petsche, Nadine (TBS) [<mailto:Nadine.Petsche@ontario.ca> mailto:Nadine.Petsche@ontario.ca]

Sent: Monday, September 21, 2015 10:48 AM

To: CHENG Alec -FIN & C CTRL; <mailto:Samir.Chhelavda@HydroOne.com> Samir.Chhelavda@HydroOne.com

Subject: FW: Any feedback on IFRS 14?

Alec/Samir,

I'm assuming that your feedback will be through the CEA as in the past? If you think it would be helpful for the Province to provide a response, please let me know. At this time, I'm not contemplating any feedback.

Thanks.

Nadine

-----Original Message-----

From: Picard, Michel [<mailto:mpicard@kpmg.ca> mailto:mpicard@kpmg.ca]

Sent: September 21, 2015 10:18 AM

To: Petsche, Nadine (TBS)

Subject: FW: Any feedback on IFRS 14?

Hi Nadine,

I trust all is well with you.

Do you have any feedback for Jane? Jane is the IASB staff responsible for the Rate-regulated project. I have already shared this with Alec and Samir.

Have a great day,

Michel

-----Original Message-----

From: Pike, Jane [<mailto:jpike@ifrs.org> mailto:jpike@ifrs.org]

Sent: Friday, September 18, 2015 11:24 AM

To: Picard, Michel

Subject: Any feedback on IFRS 14?

Hi Michel

I hope that all is well with you.

I am speaking at an event in Brussels next Wednesday and have been asked whether there is any feedback that I can provide on the reaction to IFRS 14 from users or preparers.

I know it's a bit early for a full picture to emerge in Canada yet but is there any useful message that I could pass on to European preparers?

Best regards

Jane

Sent from my iPhone

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RE_ B-0000021607.rtf

From: Virani, Shyrose (TBS) []
To: Howarth, Tess (MGCS) [Tess.Howarth@ontario.ca]
Subject: RE: B-0000021607
Date: Tuesday, September 12, 2017 11:50:34
Attachment 1: image001.jpg

Thanks

Would you happen to have security clearances for:

1. Suzie Gignac
2. LeeAnne Probert
3. Ivan Chittenden

If so, can you please send me the copies pls.

Thanks

Shyrose Virani

From: Howarth, Tess (MGCS)
Sent: September 11, 2017 2:42 PM
To: Virani, Shyrose (TBS)
Subject: B-0000021607

Hello Shyrose,

Please see attached for updated templates related to CSRA number sm2e3s.

The screening results and the file reference number should be shared with the Company Security Officer (CSO). It is your responsibility to ensure that these screening results are retained in a secure location.

If you have any questions, please do not hesitate to give me a call or send me an email.

Tess Howarth

Program Analyst

Program and Policy Enablement Branch

Supply Chain Ontario | Ministry of Government and Consumer Services

222 Jarvis St., 7th Floor

Toronto, ON, M7A 0B6

416-212-7896

Tess.Howarth@ontario.ca

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RE_ Confidentiality Agreement .rtf

From: Ngorima, Clever [cngorima@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Confidentiality Agreement
Date: Friday, June 30, 2017 11:01:38
Attachment 1: 20170630image_2017063003154100.pdf

Hi Shyrose,

Please find attached a signed copy of the confidentiality agreement.

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, June 30, 2017 10:46 AM
To: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Confidentiality Agreement

Jeremy/Clever/Alexandra:

Kindly fill in attached Confidentiality Agreement and submit it to me at your earliest.

Thanks

Shyrose Virani

From: Virani, Shyrose (TBS)
Sent: June 22, 2017 1:54 PM
To: jlallan@kmpg.ca; andrewnewman@kpmg.ca; Church, Bailey J (bchurch@kpmg.ca); louellette@kpmg.ca; jmdestefanis@kpmg.ca; cngorima@kpmg.ca; aduret@kpmg.ca; dweatherdon@kpmg.ca
Cc: 'mpicard@kpmg.ca'
Subject: Confidentiality Agreement

Hi

Before starting working on our file for Complex Accounting Services related to Electricity Sector Entities, we would like you to sign the Confidentiality Agreement, kindly sign at your earliest and return it to me.

Thanks

Shyrose Virani

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20170630image_20170630031541 00.pdf

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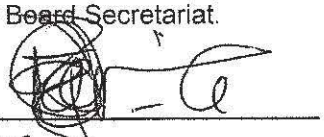
The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements, or as otherwise required in compliance with applicable law, regulation or professional standards. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain commercially reasonable measures to protect the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

Except as otherwise required in compliance with applicable professional standards, the undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Nothing in this agreement shall prevent the Vendor from conducting its engagements for the Treasury Board Secretariat in accordance with firm policies and professional standards, or from conducting its normal review and quality assurance processes with regard to engagements for the Treasury Board Secretariat.

Name: CLEVER NGORIMA Signature: 

Date: June 30, 2017

Witness: Mévo VANITA MONTEIRO Signature: Mévo

Date: June 30, 2017.

RE_ Confidentiality Agreement .rtf

From: Weatherdon, Dennis L [dweatherdon@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Confidentiality Agreement
Date: Friday, June 23, 2017 08:50:27
Attachment 1: Confidentiality Agreement - Dennis Weatherdon.pdf

---

Hi Shyrose,

Attached is my signed confidentiality agreement.

Please let me know if you require anything else.

Thanks,

Dennis

Dennis Weatherdon, CPA, CA

Senior Accountant, Audit

KPMG LLP

150 Elgin Street, Suite 1800

Ottawa, ON K2P 2P8

T 613 350 1254

F 613 212 2896

dweatherdon@kpmg.ca

LinkedIn

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Thursday, June 22, 2017 1:54 PM
To: jlallan@kmpg.ca; Newman, Andrew <andrewnewman@kpmg.ca>; Church, Bailey J <bchurch@kpmg.ca>; Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Confidentiality Agreement

Hi

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Thanks

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Confidentiality Agreement - Dennis Weatherdon.pdf

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Name: Dennis Weatherdon

Signature: DWeatherdon

Date: June 23, 2017

Witness: Casey Desjardins

Signature: CDesjardins

Date: June 23/2017

RE_ Confidentiality Agreement .rtf

From: Ouellette, Lois A [louellette@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Confidentiality Agreement
Date: Thursday, June 22, 2017 16:27:21
Attachment 1: Confidentiality agreement LO.pdf

Hello Shyrose,

Attached is my signed confidentiality agreement.

Lois Ouellette, CPA, CA

Partner, Audit

KPMG LLP

80 King Street, Suite 620

P.O. Box 1294 Stn Main

St. Catharines, ON L2R 7A7

T 905-687-3276

F 905-682-2008

louellette@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Thursday, June 22, 2017 1:54 PM

To: jlallan@kmpg.ca; Newman, Andrew <andrewnewman@kpmg.ca>; Church, Bailey J <bchurch@kpmg.ca>; Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Confidentiality Agreement

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Thanks

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CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and for 5 years following the term of the Agreement between **KPMG LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term for 5 years of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to use commercially reasonable efforts to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

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Name: Lois Ouellette — Signature: [signature] — Date: 6/22/17

Witness: Angie DiCarlo — Signature: [signature] — Date: 6/22/17

RE_ Confidentiality Agreement .rtf

From: Ouellette, Lois A [louellette@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Confidentiality Agreement
Date: Thursday, June 22, 2017 16:27:21
Attachment 1: Confidentiality agreement LO.pdf

Hello Shyrose,

Attached is my signed confidentiality agreement.

Lois Ouellette, CPA, CA

Partner, Audit

KPMG LLP

80 King Street, Suite 620

P.O. Box 1294 Stn Main

St. Catharines, ON L2R 7A7

T 905-687-3276

F 905-682-2008

louellette@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Thursday, June 22, 2017 1:54 PM

To: jlallan@kmpg.ca; Newman, Andrew <andrewnewman@kpmg.ca>; Church, Bailey J <bchurch@kpmg.ca>; Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Confidentiality Agreement

Hi

Before starting working on our file for Complex Accounting Services related to Electricity Sector Entities, we would like you to sign the Confidentiality Agreement, kindly sign at your earliest and return it to me.

Thanks

Shyrose Virani

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- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

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Confidentiality agreement LO.pdf

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Name: Lois Ouellette — Signature: [signature] — Date: 6/22/17

Witness: Angie DiCarlo — Signature: [signature] — Date: 6/22/17

RE_ Confidentiality Agreement .rtf

From: Church, Bailey J [bchurch@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Confidentiality Agreement
Date: Tuesday, June 27, 2017 11:35:37
Attachment 1: confidentiality jbc.pdf

Hi Shyrose

We are very much looking forward to assisting you with this engagement. My signed confidentiality agreement is attached for your records.

Best regards

Bailey

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Thursday, June 22, 2017 1:54 PM
To: jlallan@kmpg.ca; Newman, Andrew <andrewnewman@kpmg.ca>; Church, Bailey J <bchurch@kpmg.ca>; Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
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Shyrose Virani

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confidentiality jbc.pdf

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Name: _____ Signature: _____

Date: 06-26-17

Witness: Stacey McMillan Signature: _____

Date: 06-26-17

RE_ Contaminated Sites Policy & Guidelines (For review).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Tam, Nelson (TBS) [Nelson.Tam@ontario.ca]
Subject: RE: Contaminated Sites Policy & Guidelines (For review)
Date: Tuesday, February 14, 2017 13:03:35
Attachment 1: image001.gif

Thanks Suzie.

We'll be in touch to set up a time to chat tomorrow.

Take care,

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: February 14, 2017 12:00 PM
To: Petsche, Nadine (TBS); Lee Anne Probert
Cc: Virani, Shyrose (TBS)
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Hi Nadine:

Lee Anne and I have started a high level review of the contaminated sites documents. On first read, we do not expect to have significant comments from a policy perspective. I suspect it will be tomorrow before we get through initial read of the documents though so I would suggest a call late afternoon tomorrow. I am available between 2:30-5:30 tomorrow. We will perform a more detailed analysis against the PSAS standard with a goal of providing any further comments by Feb 23.

Lee Anne will follow up with an email on the other issues we have been discussing related to the IESO. Please let me know your availability for a call tomorrow afternoon.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, February 14, 2017 9:52 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Suzie/Lee Anne,

The OAG will be conducting a follow up audit on our Contaminated Sites management in the coming weeks. We are looking forward to your feedback on the draft policy and guidelines in advance of recirculating them to the ministries and the OAG.

Just wondering if you would like to arrange for a call sometime today to walk through your comments? Otherwise, we'll look forward to receiving your feedback via email.

Thanks in advance.

Nadine

From: Petsche, Nadine (TBS)
Sent: February 9, 2017 6:05 AM
To: Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: Virani, Shyrose (TBS)
Subject: Contaminated Sites Policy & Guidelines (For review)

Suzie/Lee Anne,

Please find attached a draft copy of OPCD's Accounting Policy and Guidelines for your review, as well as the accompanying template summarizing our request related to this item.

As you'll note from the template, the purpose of this initial request is to seek your general/high level feedback, focusing on any comments you may have based on your experience with interjurisdictional policies and guidelines on contaminated sites (including the Federal Government).

It is our plan to recirculate the draft accounting policy and guidelines with the ministries early next week, and subsequently with the AG for additional feedback.

If it is possible to receive your high level feedback by next Tuesday, it would be much appreciated. With regards to the more detailed feedback, if we could receive additional feedback by Feb. 23rd we could take it into consideration in finalizing the document for release in early March.

Please let us know if this timing will work for you.

Regards,

Nadine

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image001.pdf

RE_ Contaminated Sites Policy & Guidelines (For review).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Contaminated Sites Policy & Guidelines (For review)
Date: Tuesday, February 14, 2017 10:52:11

Suzie/Lee Anne,

The OAG will be conducting a follow up audit on our Contaminated Sites management in the coming weeks. We are looking forward to your feedback on the draft policy and guidelines in advance of recirculating them to the ministries and the OAG.

Just wondering if you would like to arrange for a call sometime today to walk through your comments? Otherwise, we'll look forward to receiving your feedback via email.

Thanks in advance.

Nadine

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Sent: February 9, 2017 6:05 AM
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Cc: Virani, Shyrose (TBS)
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release in early March.

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Regards,

Nadine

RE Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx.pdf

From: Veinot, Cindy (TBS)
To: Petsche, Nadine (TBS); Picard, Michel (mpicard@kpmg.ca)
Subject: RE: Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx
Date: February 27, 2017 10:28:36 PM

Just weighing in on this – not clear to me how IESO sells an asset with a book value of 30 and OPG Trust recognizes the same asset with a book value of 30.77.

From: Petsche, Nadine (TBS)
Sent: February-27-17 8:59 PM
To: Picard, Michel (mpicard@kpmg.ca)
Cc: Veinot, Cindy (TBS)
Subject: Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx

Michel,
Attached is the revised spreadsheet including updated amounts to reflect the additional interest components as provided by OPG in the weekend.
As you'll see, the current year's interest expense is recognized by the Trust which also reports an increase in its intangible asset to include the interest component for future recovery.
The additional amount borrowed does not actually flow through to the IESO, but rather is limited in relevance to the Trust and its financing sources.
I assume that this is doable under IFRS? This would not constitute the 'interest on intangible' issue that was raised earlier?
Nadine

RE_ Draft TPA.rtf

From: Petsche, Nadine (TBS) []
To: PRESTAGE, JA [JA.PRESTAGE@blakes.com]
CC: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Draft TPA
Date: Wednesday, March 22, 2017 18:58:48
Attachment 1: image001.gif

Thanks Jon.

Nadine

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March-22-17 6:23 PM
To: Petsche, Nadine (TBS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); ASHBOURNE, STEPHEN
Subject: Draft TPA

Nadine:

A further draft of the TPA is attached to reflect your most recent comments.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: Petsche, Nadine (TBS) []
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CC: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Draft TPA
Date: Wednesday, March 22, 2017 18:58:48
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Cc: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); ASHBOURNE, STEPHEN
Subject: Draft TPA

Nadine:

A further draft of the TPA is attached to reflect your most recent comments.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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image001.pdf

Blakes

RE_ Electricity -- Accounting discussion call.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; Kim Marshall [Kim.Marshall@ieso.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Electricity -- Accounting discussion call
Date: Sunday, February 26, 2017 16:35:09

I am fine for 8pm

-----Original Message-----
From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: Sunday, February 26, 2017 2:46 PM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Cc: Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>; MAUTI John -FIN & C CTRL <john.mauti@opg.com>; CHENG Alec -FIN & C CTRL <alec.cheng@opg.com>; Kim Marshall <Kim.Marshall@ieso.ca>; Picard, Michel <mpicard@kpmg.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Re: Electricity -- Accounting discussion call

I am ok for 8 pm

On Feb 26, 2017, at 2:38 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

Hi all - are folks available for a call later this evening to ensure we're on the same page before tomorrow morning's meeting?

I'm going to suggest 8 pm for 30-45 minutes in the hopes that it doesn't disrupt too many family/friend dinner plans.

I'll get a dial in send out.

Thanks,

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RE_ Electricity -- Update from 8 pm accounting call.rtf

From: Veinot, Cindy (TBS) []
To: Hughes, Karen (TBS) [Karen.Hughes@ontario.ca]; Angus, Helen (TBS) [Helen.Angus@ontario.ca]
CC: Laughton, Patrick (TBS) [Patrick.Laughton@ontario.ca]; MacIntyre, Kyle (TBS) [Kyle.MacIntyre@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Electricity -- Update from 8 pm accounting call
Date: Sunday, February 26, 2017 23:47:19

Call at 9:45 included -- OPCD (Nadine + me), OFA (Ken K), OPG (Alec Cheng and John Mauti) and KPMG (Michel Picard).

We covered the OEB issue again – nothing new.

We discussed how OPG Trust will recognize revenue related to the interest charges from Day 1 – I've asked OPG to ensure they communicate with Energy re: legislation being drafted in line with this understanding and any communication will taking this into account (depending on the level of detail in communications, this may be addressed.) This issue is critical to the Province not having a fiscal impact from the transaction (excluding consideration of any differential in interest rates.)

OPG expects to have a draft whitepaper ready for tomorrow (we haven't seen a draft).

Cindy

From: Veinot, Cindy (TBS)
Sent: February-26-17 9:27 PM
To: Hughes, Karen (TBS); Angus, Helen (TBS)
Cc: Laughton, Patrick (TBS); MacIntyre, Kyle (TBS); Hosick, Sarah (TBS); Petsche, Nadine (TBS)
Subject: Electricity -- Update from 8 pm accounting call

Call at 8 included – OPCD (Nadine + me), OFA (Ken K), IESO (Kim Marshall) and KPMG (Michel Picard).

We largely focused on the OEB issue as OPG was not available (planning to speak to them at 9:45 this evening).

Michel and Kim M were at one of the OEB meetings on Friday, but not for the entire meeting. Serge mentioned there were two meetings on Friday. We discussed that tomorrow, it would be best for Steen/Scott Nelms to provide an overview of the meetings with the OEB.

With respect to the accounting implications, we discussed that there is some precedent in Canada for entities applying rate regulated accounting when their own Board acts as the governing body in setting rates. Michel is going to provide the examples he is aware of (NAV Canada, a BC Ferries organization and one other). We need to do some additional due diligence on this, but the idea is whether the IESO Board could act as the governing body.

The wording of the accounting criteria that is at risk is:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator **or by its own governing board empowered by statute or contract to establish rates that bind customers.**

Because the OEB is not considered independent from an accounting perspective (controlled by the Province), the OEB is viewed as meeting the bolded section above (Nadine – feel free to provide more context). The idea being considered is whether there could be two regulators for IESO – OEB for part of their business and IESO Board another part of their business. I've asked Kim M to speak to this idea tomorrow morning from an accounting perspective re: IESO.

In an already complex transaction structure, it would be simpler for the OEB to regulate the GA smoothing, so in my view, this idea adds complexity and risk to the structure. In

addition, as noted, we need to complete our due diligence on the idea (which folks are working on.)

Cindy

RE_ entries (per review with CV).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: entries (per review with CV)
Date: Monday, February 13, 2017 16:18:06

Thanks Nadine.

I agree with you that reduction of costs is better under US GAAP. Under the potential new standard under IFRS, it will be a revenue rather than a reversal of the expense. BTW, IESO does not show the P/L impact as they would be considered an agent.

I am trying to fine justification to reduce the regulatory asset rather than to create a liability. My preferred treatment as well.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, February 13, 2017 2:58 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: entries (per review with CV)

Hi Michel.

I had a chance to review the draft entries with Cindy, and below are additional considerations. In particular, #3 and #4 have suggested edits. N

The journal entries to reflect the above discussion are as follows:

1. to record the energy purchased from generators

Dr Energy purchased 100

Cr Generators 100

2. to record the amount collected from the distributors

Dr Cash 90

Cr Revenue 90

3. to record the remaining amount to be collected from the distributors over a period of 20-30 years in accordance with legislation and the OEB ‘s direction

Dr Regulatory asset 10 Can IESO record a regulatory asset? In order for costs to be RA, has to be part of IESO’s incurred costs.

Cr Energy Purchased ~~Revenue~~ 10

4. to record the cash received from OPG to finance the remaining 10% payments to the generators

Dr Cash rec’d OPG 10

Cr ~~Due to OPG~~ Regulatory asset 10 The alternative is to eliminate the regulatory asset instead of creating a liability. (CV’s view supports the alt treatment)

5. to record the payments to generators

Dr Generators 100

Cr Cash 100

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Re_ .rtf

From: Petsche, Nadine (TBS) []
To: Blake Langill [blake.w.langill@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Re:
Date: Thursday, December 01, 2016 10:48:28
Attachment 1: image001.gif

Hi Blake.
Today doesn't look like it will work. Perhaps we can schedule some time for tomorrow. Shyrose (copied), can help if you provide your availability info. Also, is there a template you can share that would help with documenting specific requests over the course of the service term? Thanks in advance.
Nadine
From: Blake Langill
Sent: Thursday, December 1, 2016 9:42 AM
To: Petsche, Nadine (TBS)
Cc: Suzie Gignac
Subject:

Hi Nadine.

Sorry I missed you yesterday. What's your time like today?

Suzie is available from noon to 4:30 and I'm available until 11:30 and then between 2:30 and 4:30.

Cheers.

-blake

--

Blake Langill | Partner

Ernst & Young LLP

222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

Website: http://www.ey.com

Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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image001.pdf

Re_ Confidentiality Agreement .rtf

From: Picard, Michel [mpicard@kpmg.ca]
To:
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Re: Confidentiality Agreement
Date: Friday, June 30, 2017 13:53:08

Hi Shyrose,

I made a mistake with the Triton. Can you please send a new link?

Happy 150 Canada day!

Michel

Sent from my iPhone

On Jun 30, 2017, at 11:01, Ngorima, Clever <cngorima@kpmg.ca<mailto:cngorima@kpmg.ca>> wrote:

Hi Shyrose,
Please find attached a signed copy of the confidentiality agreement.

Regards,
Clever Ngorima
Accounting Advisory Services
T 416 777 3639
cngorima@kpmg.ca<mailto:cngorima@kpmg.ca>

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, June 30, 2017 10:46 AM
To: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca<mailto:jmdestefanis@kpmg.ca>>; Ngorima, Clever <cngorima@kpmg.ca<mailto:cngorima@kpmg.ca>>; Duret, Ali <aduret@kpmg.ca<mailto:aduret@kpmg.ca>>
Cc: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: FW: Confidentiality Agreement

Jeremy/Clever/Alexandra:

Kindly fill in attached Confidentiality Agreement and submit it to me at your earliest.

Thanks
Shyrose Virani

From: Virani, Shyrose (TBS)
Sent: June 22, 2017 1:54 PM
To: jlallan@kmpg.ca<mailto:jlallan@kmpg.ca>; andrewnewman@kpmg.ca<mailto:andrewnewman@kpmg.ca>; Church, Bailey J (bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>); louellette@kpmg.ca<mailto:louellette@kpmg.ca>; jmdestefanis@kpmg.ca<mailto:jmdestefanis@kpmg.ca>; cngorima@kpmg.ca<mailto:cngorima@kpmg.ca>; aduret@kpmg.ca<mailto:aduret@kpmg.ca>; dweatherdon@kpmg.ca<mailto:dweatherdon@kpmg.ca>
Cc: 'mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>'
Subject: Confidentiality Agreement

Hi

Before starting working on our file for Complex Accounting Services related to Electricity Sector Entities, we would like you to sign the Confidentiality Agreement, kindly sign at your earliest and return it to me.

Thanks
Shyrose Virani
<20170630image_2017063003154100.pdf>

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Re_ Control over Trusts.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Control over Trusts
Date: Wednesday, March 15, 2017 11:09:16

Affordability fund. I understand that your firm is engaged to advise on control by H1 or the province (per Samir). N

Original Message
From: Picard, Michel
Sent: Wednesday, March 15, 2017 11:06 AM
To: Petsche, Nadine (TBS)
Subject: RE: Control over Trusts

Which documents are you referring to? PSAB docs - no.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 15, 2017 10:42 AM
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Control over Trusts

Michel,
Trust consolidation is being discussed at the ADG. Andrew is the Chair for the ADG. Just wondering if you have the copies of the working docs for review of potential risks under PSAB for consolidation under PSAB? N

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Re_ Declaration of Trust and Transfer Pricing agreement (TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Declaration of Trust and Transfer Pricing agreement (TPA)
Date: Wednesday, March 15, 2017 11:36:14

I assume that you are aware that there are principles that are intended to be communicated in the TPA and Trust Deed, and it will be up to the Trustees to determine criteria and funding decisions related to serving the beneficiary group. Your feedback on the model overall and the draft working docs would be very valuable at this point. May want Andrew to provide input as well. N

Original Message
From: Petsche, Nadine (TBS)
Sent: Wednesday, March 15, 2017 11:24 AM
To: Picard, Michel
Subject: Re: Declaration of Trust and Transfer Pricing agreement (TPA)

It's moving at a fast pace, and any control risks would better be id'd sooner than later. I think it would be reasonable for you to review a working draft now. Samir and Alex (legal) should have a current version as of last night. Please let me know if I can help. N

Original Message
From: Picard, Michel
Sent: Wednesday, March 15, 2017 11:11 AM
To: Petsche, Nadine (TBS)
Subject: FW: Declaration of Trust and Transfer Pricing agreement (TPA)

According to the email below, we will get it on Friday night.

-----Original Message-----
From: Picard, Michel
Sent: Tuesday, March 14, 2017 5:17 PM
To: 'Samir.Chhelavda@HydroOne.com' <Samir.Chhelavda@HydroOne.com>; Atkins, Leontine (Calgary) <latkins@kpmg.ca>
Subject: RE: Declaration of Trust and Transfer Pricing agreement (TPA)

sure

-----Original Message-----
From: Samir.Chhelavda@HydroOne.com [mailto:Samir.Chhelavda@HydroOne.com]
Sent: Tuesday, March 14, 2017 5:05 PM
To: Atkins, Leontine (Calgary) <latkins@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: Declaration of Trust and Transfer Pricing agreement (TPA)

Change in the Timeline, the documents will come to KPMG by end of day Friday March 17 would it be possible to review and provide your comments by Sunday?

Sorry for the weekend work ☹

Thx,

Samir Chhelavda

Hydro One
Office: 416-345-5517
Mobile: 416-414-3810

Sent from my iPhone.

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> On Mar 14, 2017, at 8:49 AM, Atkins, Leontine (Calgary) <latkins@kpmg.ca> wrote:
>
> I can look at Thursday 1.00 mst.
>
> Sent from my iPhone
>
>> On Mar 14, 2017, at 05:44, Picard, Michel <mpicard@kpmg.ca> wrote:
>>
>> Ok on my side
>>
>> Sent from my iPhone
>>
>>> On Mar 13, 2017, at 20:31, "Samir.Chhelavda@HydroOne.com"
<Samir.Chhelavda@HydroOne.com> wrote:
>>>
>>> Leontine and Michel,
>>>
>>> If we get you the above two agreements say by end of day Wednesday, would KPMG be able to review and provide comments by end of day Thursday?
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Re_ Declaration of Trust and Transfer Pricing agreement (TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Declaration of Trust and Transfer Pricing agreement (TPA)
Date: Wednesday, March 15, 2017 11:24:42

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>

RE_ EXTERNAL - New thinking.rtf

From: Veinot, Cindy (TBS) []
To: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; Picard, Michel [mpicard@kpmg.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Imbrogno, Serge (ENERGY) [Serge.Imbrogno@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Ouellette, Lois A [louellette@kpmg.ca]; Betik, Matthew [mbetik@kpmg.ca]; HARTWICK Ken -FINANCE [ken.hartwick@opg.com]
Subject: RE: EXTERNAL - New thinking
Date: Sunday, February 26, 2017 14:34:39

In the absence of IESO selling a regulatory asset to OPG Trust, what is IESO selling? It would seem to be that the transaction would then be more akin to the sale of future revenues, which is typically accounted for as a financing transaction.

I would be interested in understanding more the opportunity to pursue additional discussions with the OEB -- is that door closed?

Cindy

-----Original Message-----
From: CHENG Alec -FIN & C CTRL [mailto:alec.cheng@opg.com]
Sent: February-25-17 9:46 PM
To: Picard, Michel; MAUTI John -FIN & C CTRL
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY); Ouellette, Lois A; Betik, Matthew; HARTWICK Ken -FINANCE
Subject: Re: EXTERNAL - New thinking

Normally, in a related party transaction, one party would set up an asset the other party should have a liability (or a reduction of asset). Given this principle, in my view, the proper accounting should be a hit to the Province or IESO books to offset the asset on the sale to OPG reflecting the sale of future cash inflows. Without a regulatory asset, this would result in the deferred amount flowing through the provincial deficit.

Original Message
From: Picard, Michel
Sent: Saturday, February 25, 2017 6:03 PM
To: MAUTI John -FIN & C CTRL
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY); Ouellette, Lois A; Betik, Matthew; HARTWICK Ken -FINANCE
Subject: Re: EXTERNAL - New thinking

Thanks John.

I was thinking that the asset was sold on a daily basis but not necessarily settle on a daily basis.

The reason of the daily sale was to match the energy cost incurred to avoid having an accounting loss.

Instead of daily, the sale could take place on, at least, on a monthly basis to avoid any accounting impact on IESO's monthly income statement. The settlement should be made to meet the cash outflows requirement.

I believe there is a risk for the AG to refuse rate regulated accounting under PSAB. Without the intervention of the OEB, OPG should be able to get a better rating of the bonds.

Sent from my iPhone

On Feb 25, 2017, at 13:05, MAUTI John -FIN & C CTRL
<john.mauti@opg.com<mailto:john.mauti@opg.com>> wrote:

Michel,
I believe this approach increases the risk of seeing through what this transaction is and having it hit the Provincial deficit immediately. Plus, the transaction would incorrectly be viewed as an OPG only transaction with the GA rebate being on account of OPG.

We've discussed the optics in the past of the IESO not showing the acquisition / set up of an asset through the "speed" with which it is absorbed and picked up by OPG. We've taken it to the extreme of the position that the asset is never on the IESO's books because it settles daily (so it's not a tranche on a quarterly or semi annual basis but basically 365 tranches per year).

What you're suggesting is that OPG recognizes an asset that the IESO so no ability to set up on its own. Doing it daily does not change that fact in my opinion.

My suggestion:
"Desire to be involved" was never a criteria for this plan..... why not compel the OEB to adhere to the legislation and write them in to limit their involvement to ensuring the recovery is as per allowed in the legislation (no ability to alter or really make any decision other than the legislation and subsequent regulation are being followed). Legislation and regulation that directs the OEB to do things is standard practice and is not something that the OEB can determine or dictate.

Thanks
John Mauti

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Friday, February 24, 2017 10:51 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY)
Cc: Ouellette, Lois A; Betik, Matthew
Subject: EXTERNAL – New thinking

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All,

As you know by now, the OEB believes that they should not be involved with the approval process of the regulatory asset.

In the absence of regulatory accounting, PSAB requires that the energy purchased (the unrecognized regulatory asset) be expensed immediately.

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The new accounting approach would:

· not require the approval of the OEB;
· not require IESO to adopt regulatory accounting under PSAB; and · permit the legislation to be as tight as possible for the right to collect the intangible asset; and · not require the consolidation of the market books.

I would appreciate your comments on the proposed approach above.

Ps: Is this the magic that Andrew was expecting!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMGaQ&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=x8jOMnpnHgIfMDkvFGR2RUAuvCsT0NVUQ5RRDcCtE9c&s=YLt1jRzoPpDM030sMIwbi2TPyWCqDVUfaZ7rJFQFG7Y&e=>

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(http://subscribe.kpmg.ca<https://urldefense.proofpoint.com/v2/url?u=http-3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwMGaQ&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=x8jOMnpnHgIfMDkvFGR2RUAuvCsT0NVUQ5RRDcCtE9c&s=2TcOdaz_sQq-GO5HrvMBWpmzOUrZF6joIHbpymtTNfQ&e=>).

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* Disclaimer concerning tax advice<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (http://taxdisclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html>).

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RE_ EXTERNAL - New thinking.rtf

From: MAUTI John -FIN & C CTRL [john.mauti@opg.com]
To: 'Picard, Michel' [mpicard@kpmg.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Imbrogno, Serge (ENERGY) [Serge.Imbrogno@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
CC: Ouellette, Lois A [louellette@kpmg.ca]; Betik, Matthew [mbetik@kpmg.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; HARTWICK Ken -FINANCE [ken.hartwick@opg.com]
Subject: RE: EXTERNAL - New thinking
Date: Saturday, February 25, 2017 14:05:22

Michel,

I believe this approach increases the risk of seeing through what this transaction is and having it hit the Provincial deficit immediately. Plus, the transaction would incorrectly be viewed as an OPG only transaction with the GA rebate being on account of OPG.

We've discussed the optics in the past of the IESO not showing the acquisition / set up of an asset through the "speed" with which it is absorbed and picked up by OPG. We've taken it to the extreme of the position that the asset is never on the IESO's books because it settles daily (so it's not a tranche on a quarterly or semi annual basis but basically 365 tranches per year).

What you're suggesting is that OPG recognizes an asset that the IESO so no ability to set up on its own. Doing it daily does not change that fact in my opinion.

My suggestion:

"Desire to be involved" was never a criteria for this plan..... why not compel the OEB to adhere to the legislation and write them in to limit their involvement to ensuring the recovery is as per allowed in the legislation (no ability to alter or really make any decision other than the legislation and subsequent regulation are being followed). Legislation and regulation that directs the OEB to do things is standard practice and is not something that the OEB can determine or dictate.

Thanks

John Mauti

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Friday, February 24, 2017 10:51 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY)
Cc: Ouellette, Lois A; Betik, Matthew
Subject: EXTERNAL – New thinking

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Ps: Is this the magic that Andrew was expecting!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ EXTERNAL - RE_ OPG as a GBE.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: EXTERNAL - RE: OPG as a GBE
Date: Thursday, March 02, 2017 12:57:35

Nadine,

I had a quick read of the analysis and I am fine with your conclusions.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 02, 2017 8:59 AM
To: MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Cc: CHENG Alec -FIN & C CTRL <alec.cheng@opg.com>; Picard, Michel <mpicard@kpmg.ca>
Subject: RE: EXTERNAL - RE: OPG as a GBE

John,

Please see attached draft of GBE analysis as related to OPG. It would be appreciated if your team could review for completeness and accuracy, mainly as related to the analysis as it related to the GA initiative.

We'll look forward to receiving your feedback.

Nadine

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: February 28, 2017 7:29 AM
To: Petsche, Nadine (TBS)
Cc: CHENG Alec -FIN & C CTRL; MAUTI John -FIN & C CTRL
Subject: RE: EXTERNAL - RE: OPG as a GBE

Nadine,

To reiterate, OPG will not be commenting or concluding whether we continue to be a GBE for government reporting purposes.

The Province can use our white paper and its conclusions to evaluate the criteria and risks as far as OPG operating in a self standing manner, including this transaction. But as we state, that will depend heavily on the legislation, trust indenture, etc.

Ken reiterated as much in his email (attached).

There will be no risk assessment of conclusion as to GBE status coming from OPG.

Thanks

John G. Mauti
Chief Controller & Accounting Officer

OPG Inc.

(416) 592-4046

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, February 27, 2017 10:31 PM
To: MAUTI John -FIN & C CTRL
Cc: CHENG Alec -FIN & C CTRL
Subject: EXTERNAL – RE: OPG as a GBE

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi John/Alec,

Just following up on my email of last week regarding consideration of OPG as a GBE under the GA cost deferral scenario. I wouldn't anticipate that OPG's status as a GBE would change as a result of the proposed structure (assuming that your stipulated requirements are addressed), but as your risk analysis in the whitepaper acknowledges, uncertainty is inherent. Ken also made a good point earlier today w.r.t. financing rate risks and resulting exposure to OPG's GBE status in the event of financing rate risks and ability to continue to fund the Trust. It is probably worthwhile to raise a risk like this in the analysis.

I'm assuming that the analysis will be completed by your team based on a conversation I had with Cindy last Wednesday in which she mentioned that Ken said that the analysis would be done by OPG. Please let us know when you might have a draft analysis to share, and if you require any assistance.

Regards,

Nadine

From: Petsche, Nadine (TBS)
Sent: February-22-17 6:14 PM
To: MAUTI John -FIN & C CTRL
Cc: Patel, Bharat (TBS); CHENG Alec -FIN & C CTRL
Subject: OPG as a GBE

Hi John.

As mentioned earlier today, I haven't been able to find a prior assessment of OPG as a GBE. You will note that the attached PSAB document includes an electricity sector example in its discussion on GBEs (http://www.frascanada.ca/standards-for-public-sector-entities/resources/reference-materials/item14956.pdf). As a starting assumption, we believe that OPG is appropriately classified as a GBE and this classification has not been questioned by the OAG to date.

The following table provides an overview of the key criteria which need to be assessed in considering whether an entity is a government business enterprise, which are further discussed in the attached handbook extract on section 1300, The Government Reporting Entity. The focus of the current discussion is OPG's ability to maintain its

GBE status under the envisioned transaction structure. Please let us know if we can provide any assistance in completing the analysis of OPG.

Regards,

Nadine

Section 4 - Summary of Evaluation for Government Business Enterprises (PS 1300)

Criteria Applies

Yes/No

Required Characteristics of a Government Business Enterprise

(A) It is a separate legal entity with the power to contract in its own name and that can sue and be sued

(B) It has been delegated the financial and operational authority to carry on a business

(C) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and

(D) It can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.

Conclusion (Must meet all four characteristics to qualify as a GBE):

Notes -

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RE_ EXTERNAL - RE_ OPG as a GBE.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: EXTERNAL - RE: OPG as a GBE
Date: Thursday, March 02, 2017 18:15:29

Thanks Michel. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 2, 2017 11:58 AM
To: Petsche, Nadine (TBS)
Subject: RE: EXTERNAL - RE: OPG as a GBE

Nadine,

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 02, 2017 8:59 AM
To: MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Cc: CHENG Alec -FIN & C CTRL <alec.cheng@opg.com>; Picard, Michel <mpicard@kpmg.ca>
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RE_ EXTERNAL - Re_ RM_Potential Structure - Feb 13.pptx.rtf

From: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
To: 'Picard, Michel' [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: EXTERNAL - Re: RM_Potential Structure - Feb 13.pptx
Date: Tuesday, February 14, 2017 09:25:03

I am still working the conditions required for OPG to consolidate the Trust. One of the ingredients needed is external debt financing, we may need to soften the financing option to allow for external financing (outside of the OFA). With the OFA being the debt provider, it would appear the OFA should consolidate the Trust.

Alec

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, February 13, 2017 9:45 PM
To: Kim Marshall
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); CHENG Alec -FIN & C CTRL; MAUTI John -FIN & C CTRL; Hosick, Sarah (TBS)
Subject: EXTERNAL - Re: RM_Potential Structure - Feb 13.pptx

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Ok

Sent from my iPhone

On Feb 13, 2017, at 21:28, Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>> wrote:

there are customers who are direct connected to the grid, not through an LDC, I understood they were not included in the smoothing, they have other programs available to them, so not in the "rpp"

_____
From: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Sent: February 13, 2017 7:52 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; 'CHENG Alec -FIN & C CTRL'; MAUTI John -FIN & C CTRL
Cc: Hosick, Sarah (TBS)
Subject: RE: RM_Potential Structure - Feb 13.pptx

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Monday, February 13, 2017 7:51 PM
To: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>>; Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>; 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com<mailto:alec.cheng@opg.com>>; MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>
Subject: RE: RM_Potential Structure - Feb 13.pptx

The servicing agreement?

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February-13-17 5:27 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>; 'CHENG Alec -FIN & C CTRL'; MAUTI John -FIN & C CTRL
Cc: Hosick, Sarah (TBS)
Subject: RE: RM_Potential Structure - Feb 13.pptx

I agree with the diagram. What is missing is the flow for the future cash collection ie from LDCs to IESO to the Trust.

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Monday, February 13, 2017 4:29 PM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>>; Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>; Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>; 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com<mailto:alec.cheng@opg.com>>; MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>
Subject: RM_Potential Structure - Feb 13.pptx

Hi all,

Attached is a diagram that I believe reflects our discussion from earlier today. Please take a look and determine if you think there are edits that need to be made. I'd like to ensure we are all focused on the same structure.

Thanks,

Cindy

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

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RE_ EY_OPCD Status Updates - 3pm Cancelled .rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled
Date: Thursday, September 07, 2017 13:00:18
Attachment 1: image001.gif

Hi Sarah:

Can you confirm that OPCD calls with EY/Cindy on Sept 8th and 15th should be cancelled as Cindy is away?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Thursday, August 31, 2017 1:35 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: EY/OPCD Status Updates - 3pm Cancelled
Importance: High

Hi everyone,

Apologies for the late minute change. We are going to have to reschedule this meeting until the week of the 18th when Cindy is back in the office.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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image001.pdf

RE_ EY_OPCD Status Updates - 3pm Cancelled .rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled
Date: Thursday, September 07, 2017 13:23:41
Attachment 1: image001.gif

Thanks Sarah. I am in a course and Lee Anne is away tomorrow so could you provide some times when Mark is available next week? Alternatively, we could cancel the meeting tomorrow and keep the one next Friday.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Thursday, September 07, 2017 1:12 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled

Cindy would still like the calls to go ahead with Mark in her absence.

That being said, if there's a more beneficial time the four of you wish to work out instead while Cindy is away, please feel free.

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: September 7, 2017 1:00 PM
To: Hosick, Sarah (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled

Hi Sarah:

Can you confirm that OPCD calls with EY/Cindy on Sept 8th and 15th should be cancelled as Cindy is away?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Thursday, August 31, 2017 1:35 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: EY/OPCD Status Updates - 3pm Cancelled
Importance: High

Hi everyone,

Apologies for the late minute change. We are going to have to reschedule this meeting until the week of the 18th when Cindy is back in the office.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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image001.pdf

RE_ EY_OPCD Status Updates - SOW.rtf

From: Virani, Shyrose (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: EY/OPCD Status Updates - SOW
Date: Wednesday, August 08, 2018 15:05:02
Attachment 1: 20180808150319250.pdf

Hi Suzie,

Attached, please find an extension letter. Pls sign and send it to me at your earliest.

Thanks
Shyrose

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: August 8, 2018 1:34 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>
Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>; Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: EY/OPCD Status Updates - SOW

Hi Suzie, Blake,

We've confirmed that we are able to do an additional one-time extension to the current SOW that is currently in effect to August 10 to March 31, 2019. We are drawing up an amendment to the original SOW for your review and signature. The extension covers the duration of the contract, but keep the ceiling as agreed upon initially.

I will ask Shyrose to send this through to you shortly.

Please call me if you have any questions - 416.325.8027

Thanks,
Mark

-----Original Message-----
From: Jeannie Kaminski [mailto:Jeannie.Kaminski@ca.ey.com]
Sent: July 23, 2018 3:22 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: EY/OPCD Status Updates

Good afternoon Mark,

Attached is the Amendment, initialed by Suzie.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ey.com&data=02%7C01%

7CMark.Donaldson%40ontario.ca%7C6d0d82ec73db45d4e56208d5f0d19ecf%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636679705970114995&sdata=%2FiY83izfevMBw6YHZtPmKNotrOrTW%2BjscxlZl1GEYPk%3D&reserved=0

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-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, July 20, 2018 12:43 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: EY/OPCD Status Updates

Hi Suzie - nice to speak with you.

Further to our t/c, attached is the extension we had signed earlier this year to June 30. It has come to our attention that the applicable dates of the original Statement of Work took us to February 10, 2018 (item #5 in the SOW), not December 30 as previously thought. Therefore, our extension for six months does allow us to go through to August 10. In the attachment, I have amended and initialed the dates that take us up to six months. If that meets with your approval, if you can also initial and return a copy for our files, that would be most helpful.

Under that agreement, we'd like to schedule a quick call for next week with yourself, Blake and Lee Anne just to provide an update on where things are at here w.r.t. reporting for the electricity sector and the 2017-18 Public Accounts. We'll work to make ourselves available based on whatever works best for you.

Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

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20180808150319250.pdf

AMENDMENT 002
To Extend SOW

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152 (RFS# TBS-OTB-OPCD-16)
Date of Amendment:	August 8, 2018
Amendment Number:	002

1) Amendment Details:

1.1 This amendment hereby exercises the Ministry's right to extend the Statement of Work (SOW) from August 10, 2018 to March 31, 2019.

1.2 The survivability period of the General Management Consulting Vendor of Record (VOR) OSS-00426611 ends on June 15, 2019 therefore; under no circumstances may the Statement of Work extend beyond June 15, 2019.

1.3 This extension is for time only and shall not alter the scale, scope, or deliverables of the initiative as described in the SOW.

1.4 The ceiling value of this initiative shall remain unchanged at $450,000 plus HST as stipulated in the SOW.

1.5 This amendment is subject to the terms and conditions of the Master Agreement, the Statement of Work, and any subsequent Amendments.

1.6 All other terms and conditions of the Statement of Work between Ernst & Young LLP and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Davidson

Title: DIRECTOR, FRFS, OPCD.

Ernst & Young LLP

Acknowledged: _____

Print Name: _____

Title: _____

RE_ EY_OPCD Status Updates - SOW.rtf

From: Donaldson, Mark (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EY/OPCD Status Updates - SOW
Date: Wednesday, August 08, 2018 13:34:06

Hi Suzie, Blake,

We've confirmed that we are able to do an additional one-time extension to the current SOW that is currently in effect to August 10 to March 31, 2019. We are drawing up an amendment to the original SOW for your review and signature. The extension covers the duration of the contract, but keep the ceiling as agreed upon initially.

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Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ey.com&data=02%7C01%7CMark.Donaldson%40ontario.ca%7C6d0d82ec73db45d4e56208d5f0d19ecf%7Cddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636679705970114995&sdata=%2FiY83izfevMBw6YHZtPmKNotrOrTW%2BjscxlZl1GEYPk%3D&reserved=0

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Sent: Friday, July 20, 2018 12:43 PM
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Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
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Thanks in advance,
Mark

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M7A 1Y7
(416) 325-8027

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RE_ EY_OPCD Status Updates - SOW.rtf

From: Virani, Shyrose (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: EY/OPCD Status Updates - SOW
Date: Wednesday, August 08, 2018 15:05:02
Attachment 1: 20180808150319250.pdf

Hi Suzie,

Attached, please find an extension letter. Pls sign and send it to me at your earliest.

Thanks
Shyrose

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: August 8, 2018 1:34 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>
Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>; Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: EY/OPCD Status Updates - SOW

Hi Suzie, Blake,

We've confirmed that we are able to do an additional one-time extension to the current SOW that is currently in effect to August 10 to March 31, 2019. We are drawing up an amendment to the original SOW for your review and signature. The extension covers the duration of the contract, but keep the ceiling as agreed upon initially.

I will ask Shyrose to send this through to you shortly.

Please call me if you have any questions - 416.325.8027

Thanks,
Mark

-----Original Message-----
From: Jeannie Kaminski [mailto:Jeannie.Kaminski@ca.ey.com]
Sent: July 23, 2018 3:22 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: EY/OPCD Status Updates

Good afternoon Mark,

Attached is the Amendment, initialed by Suzie.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ey.com&data=02%7C01%

7CMark.Donaldson%40ontario.ca%7C6d0d82ec73db45d4e56208d5f0d19ecf%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636679705970114995&sdata=%2FiY83izfevMBw6YHZtPmKNotrOrTW%2BjscxlZl1GEYPk%3D&reserved=0

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-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, July 20, 2018 12:43 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: EY/OPCD Status Updates

Hi Suzie - nice to speak with you.

Further to our t/c, attached is the extension we had signed earlier this year to June 30. It has come to our attention that the applicable dates of the original Statement of Work took us to February 10, 2018 (item #5 in the SOW), not December 30 as previously thought. Therefore, our extension for six months does allow us to go through to August 10. In the attachment, I have amended and initialed the dates that take us up to six months. If that meets with your approval, if you can also initial and return a copy for our files, that would be most helpful.

Under that agreement, we'd like to schedule a quick call for next week with yourself, Blake and Lee Anne just to provide an update on where things are at here w.r.t. reporting for the electricity sector and the 2017-18 Public Accounts. We'll work to make ourselves available based on whatever works best for you.

Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

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20180808150319250.pdf

AMENDMENT 002
To Extend SOW

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152 (RFS# TBS-OTB-OPCD-16)
Date of Amendment:	August 8, 2018
Amendment Number:	002

1) Amendment Details:

1.1 This amendment hereby exercises the Ministry's right to extend the Statement of Work (SOW) from August 10, 2018 to March 31, 2019.

1.2 The survivability period of the General Management Consulting Vendor of Record (VOR) OSS-00426611 ends on June 15, 2019 therefore; under no circumstances may the Statement of Work extend beyond June 15, 2019.

1.3 This extension is for time only and shall not alter the scale, scope, or deliverables of the initiative as described in the SOW.

1.4 The ceiling value of this initiative shall remain unchanged at $450,000 plus HST as stipulated in the SOW.

1.5 This amendment is subject to the terms and conditions of the Master Agreement, the Statement of Work, and any subsequent Amendments.

1.6 All other terms and conditions of the Statement of Work between Ernst & Young LLP and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Davidson

Title: DIRECTOR, FRFS, OPCD.

Ernst & Young LLP

Acknowledged: _____

Print Name: _____

Title: _____

RE_ EY_OPCD Status Updates - SOW.rtf

From: Donaldson, Mark (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EY/OPCD Status Updates - SOW
Date: Wednesday, August 08, 2018 13:34:06

Hi Suzie, Blake,

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To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
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Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
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Sent: Friday, July 20, 2018 12:43 PM
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Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
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Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
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RE_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]
Subject: RE: EY/OPCD Status Updates
Date: Friday, August 11, 2017 01:14:04

Sorry for delay. I have just sent a new version to Blake and Suzie that includes an analysis of the sale of the regulatory asset to OPG Trust.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Thursday, August 10, 2017 2:05 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Blake Langill <blake.w.langill@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: EY/OPCD Status Updates

Hi all – any updates on timeline?

Cindy

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: August 4, 2017 8:34 AM
To: Hosick, Sarah (TBS); Blake Langill; Donaldson, Mark (TBS); Lee Anne Probert; Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Subject: Re: EY/OPCD Status Updates

Sorry just saw this. Fine with me too. We will get back to you with timelines Cindy. Have a great long weekend.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 8:14:05 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>
Subject: Re: EY/OPCD Status Updates

Thanks Lee Anne. I will wait to hear from a couple of the others. Can you remind me when we can expect the next section of the analysis.

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Lee Anne Probert
Sent: Friday, August 4, 2017 7:33 AM
To: Veinot, Cindy (TBS); Blake Langill; Donaldson, Mark (TBS); Petsche, Nadine (TBS); Hosick, Sarah (TBS); Suzie Gignac
Subject: Re: EY/OPCD Status Updates

I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>,

Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>
Subject: EY/OPCD Status Updates

Just checking in to see if there are any updates for this call. If not we can cancel. Cindy

---
Organizer: Veinot, Cindy (TBS)
When: 8:30 AM - 9:00 AM August 4, 2017
Subject: EY/OPCD Status Updates
Location: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

Sent from my BlackBerry 10 smartphone on the Rogers network.

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RE_ FA1710 Combined DFR - V14 Ministry Review opcd.rtf

From: Veinot, Cindy (TBS) []
To: Schuurman, Tim (MOF) [Tim.Schuurman@ontario.ca]; Hughes, Karen (TBS) [Karen.Hughes@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd
Date: Tuesday, May 16, 2017 09:58:37
Attachment 1: image001.png

Yes – I believe those in attendance at the briefing should include Kim Marshall – IESO and Michel Picard – KPMG as well as John Mauti or Ken Hartwick from OPG, and perhaps EY (although FAO has not focused on the accounting issues re: OPG that much). In addition, we should also be in attendance. We were not in attendance at the technical briefing held for the FAO on FHP and have not had any discussions with them on the accounting. We can help coordinate those folks.

Cindy

From: Schuurman, Tim (MOF)
Sent: May-16-17 9:55 AM
To: Veinot, Cindy (TBS); Hughes, Karen (TBS)
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd

Thanks Cindy – fyi, I've been asked, as part of my call with the FAO this morning, to offer up a briefing for them with KPMG (who provided the external advice on this). Are you guys supportive of this and could help make those arrangements?

Want your input before I offer this up.

Thanks

Tim Schuurman

Assistant Deputy Minister

Office of the Budget, Ministry of Finance

7 Queen's Park Cres.

Toronto ON M7A 1Z1
Tel: 416-327-0173

From: Veinot, Cindy (TBS)
Sent: May-16-17 9:51 AM
To: Schuurman, Tim (MOF)
Cc: Hosick, Sarah (TBS)
Subject: FW: FA1710 Combined DFR - V14 Ministry Review opcd

Tim – see attached – we have edited the accounting sections vs. providing comments in the table form as the suggested edits are extensive.

Cindy

From: Veinot, Cindy (TBS)
Sent: May-15-17 7:32 PM
To: Hughes, Karen (TBS); Laughton, Patrick (TBS); Hosick, Sarah (TBS); Petsche, Nadine (TBS)
Subject: FA1710 Combined DFR - V14 Ministry Review opcd

See attached for OPCD's comments – this is a marked draft from the FAO version.

Cindy

image001.pdf

Office of the Budget
MINISTRY of FINANCE

RE_ FA1710 Combined DFR - V14 Ministry Review opcd.rtf

From: Petsche, Nadine (TBS) []
To: Schuurman, Tim (MOF) [Tim.Schuurman@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd
Date: Tuesday, May 16, 2017 13:32:20
Attachment 1: image001.png

Ok. Thanks for this. N

From: Schuurman, Tim (MOF)
Sent: May 16, 2017 11:47 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS)
Subject: Re: FA1710 Combined DFR - V14 Ministry Review opcd

Thanks Nadine.

Yes there are restrictions on sharing the report. I needed their permission to share with you and Cindy.

If I get their agreement to meet with a broader crowd, we'd get permission to share the report as well.

Tim

From: Petsche, Nadine (TBS)

Sent: Tuesday, May 16, 2017 10:44 AM

To: Schuurman, Tim (MOF)

Cc: Veinot, Cindy (TBS)

Subject: FW: FA1710 Combined DFR - V14 Ministry Review opcd

Tim,

On yesterday's call you mentioned restrictions on circulating the draft FAO report. I assume that we would be able to share with IESO, OPG (and they in turn with their external advisors), in advance of the meeting/call?

Nadine

From: Veinot, Cindy (TBS)
Sent: May 16, 2017 9:59 AM
To: Schuurman, Tim (MOF); Hughes, Karen (TBS)
Cc: Petsche, Nadine (TBS)
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd

Yes – I believe those in attendance at the briefing should include Kim Marshall – IESO and Michel Picard – KPMG as well as John Mauti or Ken Hartwick from OPG, and perhaps EY (although FAO has not focused on the accounting issues re: OPG that much). In addition, we should also be in attendance. We were not in attendance at the technical briefing held for the FAO on FHP and have not had any discussions with them on the accounting. We can help coordinate those folks.

Cindy

From: Schuurman, Tim (MOF)
Sent: May-16-17 9:55 AM
To: Veinot, Cindy (TBS); Hughes, Karen (TBS)
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd

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Tim Schuurman

Assistant Deputy Minister

Office of the Budget, Ministry of Finance

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Toronto ON M7A 1Z1
Tel: 416-327-0173

From: Veinot, Cindy (TBS)
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To: Schuurman, Tim (MOF)
Cc: Hosick, Sarah (TBS)
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Cindy

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See attached for OPCD’s comments – this is a marked draft from the FAO version.

Cindy

image001.pdf

Office of the Budget
MINISTRY of FINANCE

RE_ FAO Report.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: FAO Report
Date: Wednesday, May 24, 2017 15:15:40

Just wondering if I have the right number? n

-----Original Appointment-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 24, 2017 2:40 PM
To: Kim Marshall; Petsche, Nadine (TBS)
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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RE_ FAO Report.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: FAO Report
Date: Thursday, May 25, 2017 10:00:39

Yes although I told her we were meeting with you and she said she would make sure to touch base with you at the end of the day

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May 25, 2017 10:00 AM
To: Kim Marshall
Subject: RE: FAO Report

Hi Kim.

Not sure if Cindy is available, but is it ok if I forward the invite to her as well? n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 9:58 AM

To: Picard, Michel; Susan Nicholson; Petsche, Nadine (TBS); mbetik@kpmg.ca
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

· Her committee statement, comments – what clarifications/opposing views would add value to her comments

· Her previous regulatory accounting view – why this is ifrs 14 specific???

· What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO

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-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
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Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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RE_ FAO Report.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Betik, Matthew [mbetik@kpmg.ca]
Subject: RE: FAO Report
Date: Thursday, May 25, 2017 11:54:29

· Requesting an agenda from AG for meeting of June 14

· Date the AOG received a briefing on the transaction

· Provide similar structures in the US to OAG

· OAG/Tim Beauchamp proposed solution - GBE + IFRS

· Our national head of the Professional practice to attend the AG meetings next week and June 14

· Consider a 2nd opinion from another firm on PSAB/regulatory accounting – Deloitte independent as PWC/EY advised OPG

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Thursday, May 25, 2017 9:58 AM
To: Picard, Michel <mpicard@kpmg.ca>; Susan Nicholson <susan.nicholson@ieso.ca>; Nadine.Petsche@ontario.ca; Betik, Matthew <mbetik@kpmg.ca>
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

· Her committee statement, comments – what clarifications/opposing views would add value to her comments

· Her previous regulatory accounting view – why this is ifrs 14 specific???

· What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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RE_ FAO Report.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: FAO Report
Date: Thursday, May 25, 2017 09:59:44

Hi Kim.

Not sure if Cindy is available, but is it ok if I forward the invite to her as well? n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 9:58 AM
To: Picard, Michel; Susan Nicholson; Petsche, Nadine (TBS); mbetik@kpmg.ca
Subject: RE: FAO Report

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To: Picard, Michel [mpicard@kpmg.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; mbetik@kpmg.ca [mbetik@kpmg.ca]
Subject: RE: FAO Report
Date: Thursday, May 25, 2017 09:57:52

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

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- What is worse case – provincial books opinion

Anything else?

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; ESmith@osler.com [ESmith@osler.com]; RSebastiano@osler.com [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Monday, April 10, 2017 23:15:31
Attachment 1: image5983e9.GIF
Attachment 2: TOR_2528-#23107566-v9-_Fair_Hydro_Act_.DOCX
Attachment 3: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.PDF

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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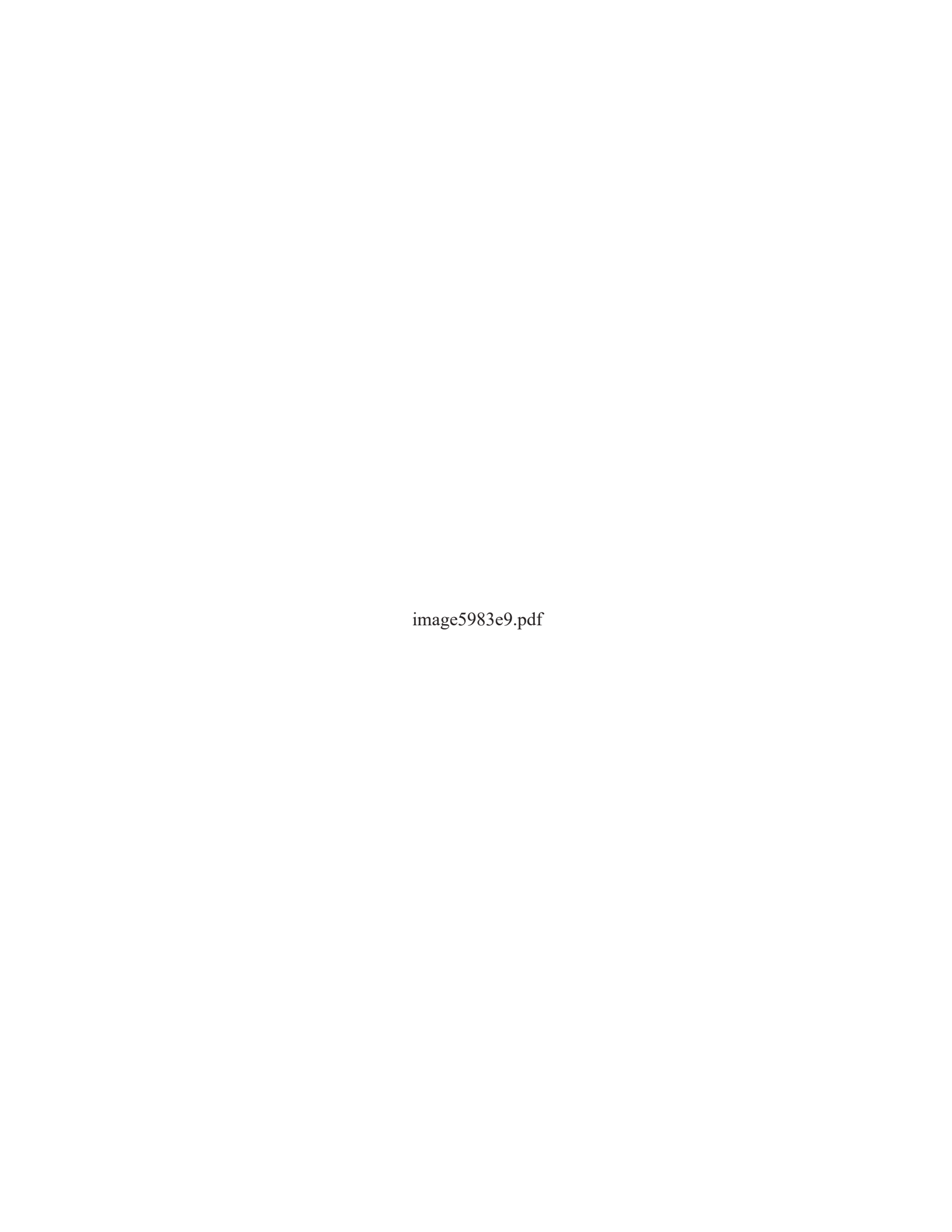
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TOR_2528-#23107566-v9-_Fair_Hydro_Act_.pdf

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

---

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

---

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection “standard of care” under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) Adoption of the Fair Allocation Plan – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

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18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

~~IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as~~The Province has and continues to encourage the construction and development of facilities for the ~~purpose of~~ long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~[The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity~~ for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative~~, on the one hand, and the costs of~~ will be well in

[1] ~~Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.~~

[2] ~~Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.~~

excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative ~~borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect~~will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that ~~can be applied from time to time in order to~~ establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative ~~across present and future Ratepayers. A plan to allocate such costs and benefits~~ equitably across present and future ~~Ratepayers may be developed based on those principles and parameters (a~~Retail Consumers (the "Fair Allocation Plan").

If ~~a~~the Fair Allocation Plan determines that the equitable allocation of the ~~Global Adjustment to the Ratepayers~~costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period ~~in respect of the Power Contracts~~ should be reduced below the amount ~~otherwise determined,~~that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Ratepayers to Electricity Distributors in respect of such period,~~Retail Consumers and in turn ~~by the Electricity Distributors to the~~available to IESO~~, would~~ will, in the aggregate, be less than the amount payable by the IESO to the ~~Generators under the Power Contracts~~generators in respect of such period. ~~If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period,~~In this case IESO will need to obtain funding from another source~~, which could include funding from third party sources operating in public and private capital markets~~ to cover such a shortfall. If a funding obligation is incurred ~~in order to enable the~~by IESO to cover such a ~~funding~~ shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs ~~will be~~ incurred ~~and may~~will become payable in one or more ~~other~~future periods. ~~It will be necessary to provide~~In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding ~~obligations and to pay related funding costs with certainty when the funding obligations~~amounts when they become due and payable~~. This Part~~, this Act imposes irrevocable and non-bypassable financial obligations ~~of Ratepayers~~on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations~~, which~~ will take the form of the Regulatory Asset contemplated in this ~~Part and~~Act, which will constitute property rights and interests. ~~The~~Interests in the Regulatory Asset ~~will~~may be sold and absolutely assigned ~~and will belong~~by IESO to one or more ~~newly created~~ financing entities, which in turn will finance their ~~purchase of such Regulatory Asset~~acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf ~~the~~such financing entities by ~~an administrative~~a financial services agent ~~(initially OPG),~~ under the Financing Plan

[3] ~~Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]~~

contemplated in this ~~Part~~Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~charged~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulatory Asset Owners~~or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in

good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 2.~~

"Allocation Factor" means, in respect of a ~~Ratepayer~~Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the ~~Ratepayer~~Retail Consumer by ~~[IESO]~~the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[4][1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[~~5~~2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

~~"Bypass Charge" means [To be developed].~~[6]

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the ~~Administrative~~Financial Services Agent, as applicable, equal to (a) the Estimate of the

[4] ~~Consider basing~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those ~~would~~may be identified and ~~rolled into~~caught by the True-Up.

[5] ~~A key question will be how the overall costs will be spread across the rate base. For example, the~~[2] This allocation may be volumetric ~~or not,~~ or some combination of a flat amount and a volumetric charge. ~~This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion~~Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[6] ~~Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.~~

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.~~7~~[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset~~an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed ~~by the OEB~~under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative Servicer)~~ or~~, by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current

[3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"~~Fair Allocation Plan" [has the meaning given in Article 1].~~Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.~~

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the

Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8] under the Financing Plan.[6]

"Financing Plan" means the written plan [prepared by the Administrative Agent]Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 89 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfallby an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (ij) the cash flows arising from time to time or otherwise derived from the Regulatory Assetan Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset OwnerAbsolute Assignee during the Reference Period in respect of allits Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to aits Funding ObligationObligations, exceeds (b) the aggregate of all Finance Receiptsamounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[8] OPG has suggested[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. These raise issues for consideration by the stakeholders.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing ~~charges, indebtedness,~~charge payments; pass-through payments; payment obligations arising under or in respect of derivatives~~,~~; payment obligations owing to service providers, ~~administrative agents~~Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all ~~taxes payable in connection with the foregoing)~~Additional Funding Charges incurred by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan ~~in order to fund a Funding Shortfall for a Reference Period~~, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.[9]

~~"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.~~[10]Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.~~[11]

"Generator" means a generator of electricity that is subject to ~~[this~~the *Electricity Act*~~]~~[12]~~.~~, *1998*.

"Global Adjustment" ~~means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.~~[13]has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" ~~[~~has the meaning given in Article ~~1]~~.1.

~~[9] OPG has asked whether this should include IESO finance arrangements.~~

~~[10] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.~~

~~[11] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]~~

~~[12] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.~~

~~[13] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").~~

"IESO" means the Independent Electricity System Operator created pursuant to ~~[insert].~~Part II of the *Electricity Act, 1998*.

"IESO ~~Applied Surplus~~Available Amount" means, for a Reference Period, the lesser of (a) the amount~~,~~ (if any~~,~~) by which (i) the ~~IESO Power Contract Net Payment~~Maximum Transition Charge Amount for the Reference Period, exceeds (ii) ~~the GA Power Contract Contribution~~Period Finance Amount for the Reference Period, and (b) the IESO ~~Unapplied Surplus on the last day of the immediately preceding Reference Period.~~ Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

~~"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

~~"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net~~

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the ~~Regulatory Asset~~Investment Interest.

"Pledgee" means a person to whom ~~a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[14]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~[15]

~~[14] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?~~

~~[15] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.~~

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.~~

"Redemption Amount" means the amount payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the ~~[Legislation Implementation~~Measurement Date~~]~~ to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means ~~that a~~, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee by applying the net proceeds obtained by the ~~Regulatory Asset Owner~~Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), ~~or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document~~which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which ~~the Servicer~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset~~as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~all of the Regulatory Asset Owners~~IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). ~~For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.~~

[16] ~~Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).~~

~~"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.~~

"Related Rights" means~~, with respect to a Regulatory Asset Owner's Regulatory Asset,~~ all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by ~~a Regulatory Asset Owner~~an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with ~~[this~~the *Electricity Act*[17]~~]~~, *1998*.

"Servicer" means ~~[To be determined]~~IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset ~~Owner [To be determined – collective invoicing agent, and consider expanding].~~Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a ~~Ratepayer~~Retail Consumer in respect of a Reference Period, ~~the sum of~~ (a) ~~[one sixth] of~~ the Period Transition Charge, (b) multiplied by its Allocation Factor ~~and (b) any Bypass Charge charged to the Ratepayer~~ in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the ~~Administrative~~Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~[18]

Article 3 – Transition Charges

(1) **~~Ratepayer~~Retail Consumer Obligation to Pay a Transition Charge** – Each ~~Ratepayer~~Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

~~[17] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.~~
~~[18] Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.~~

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset Owners, ~~(~~each with respect to its respective interest in the Regulatory Asset~~)~~. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.~~[19]~~[9]

(3) **No Set-Off or Reduction** – A ~~Ratepayer~~Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

[8] Determine if this is critical for rating and markets. Logistics under consideration.

~~[19] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation.~~[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. ~~Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis~~Consider if it is helpful to integrate the existing regulatory scheme for ~~a market based credit decision.~~invoicing and collections (regarding RPP) in the legislation.

~~(6)~~ ~~**[Anti-avoidance; No-by-pass** – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges[20]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Ratepayer~~Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Ratepayer~~Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Ratepayer~~Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each ~~Regulatory Asset Owner~~Absolute Assignee (or the ~~Administrative~~Financial Services Agent on its behalf) shall provide the ~~Servicer~~OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~[21]OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the ~~Regulatory Asset Owners, which~~Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative ~~in~~, except to the ~~absence~~extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall apply the Attribution Methodology to determine the Allocation Factor for each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Ratepayer by the Servicer~~Retail Consumer and specified as such in an Electricity Invoice shall be

~~[20] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.~~

~~[21] Should this be a designated government official, rather than an agent appointed by investors?~~

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure.[22]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor~~,~~ or any Alternative Servicer ~~or any [Alternative Collection Agent]~~ to ensure that Transition Charges are properly charged to ~~Ratepayers~~Retail Consumers and specified as such in Electricity Invoices.

[22] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts~~]~~ to collect amounts owing by ~~Ratepayers~~Retail Consumers in respect of Transition Charges charged to such ~~Ratepayers~~Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(3) **Electricity Distributor Remittances** – On each ~~[~~applicable Remittance Date~~]~~, an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Ratepayers~~Retail Consumers that pay their Electricity Invoices directly to ~~the Servicer.~~[23]IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall ~~[~~promptly~~]~~ segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(6) **IESO Remittances** – On each ~~[~~Settlement Date~~]~~[24][13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

[10] Mirror collection "standard of care" under applicable legislation.
[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.
~~[23]~~[12] Consider building this obligation into a deemed condition of licence for the IESO.
~~[24]~~[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **~~Successors of~~ IESO Successor** – ~~Any successor of~~ IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province~~25~~14, then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) **~~Regulatory Asset Owners~~Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. ~~26~~

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the

~~25~~14 This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

~~26 Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Ratepayer~~Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.~~27~~15

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~the Regulatory Asset Owners or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees, each with respect to its ~~Regulatory Asset.~~ Investment Interest, and the Pledgees as applicable.[16]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute ~~an existing, present~~a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~of a Regulatory Asset Owner in the following~~ (without duplication):

~~27~~15 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Ratepayer~~Retail Consumer reduces its payment of Transition Charges, despite this language~~, and same~~. Same for Electricity Distributor Remittances and IESO Remittances.

[16] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts~~IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Ratepayers~~Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this ~~Part~~Act;

c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2~~,3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article ~~4~~5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article ~~4~~5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Disposition that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Disposition by ~~a Regulatory Asset Owner~~IESO to an Absolute Assignee made under the Financing Plan ~~pursuant to a Disposition Document~~, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with ~~its~~the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~Regulatory Asset~~applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]~~[28], and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

~~[28] Consider if helpful to investors, or delete.~~

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset~~may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect thereto~~ pursuant to the ~~[~~PPSA~~]~~ ~~or any other further act.~~[29].[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. ~~[A Pledgee~~All provisions of the PPSA shall ~~cause a financing statement to be filed in respect of a Pledge on the basis that~~apply to the Regulatory Asset on the basis that it is ~~"~~intangible~~"~~ personal property, ~~for informational purposes only under the [PPSA].~~except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and

~~29~~17 Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's ~~right~~rights and ~~interest~~interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective ~~[~~and ~~joint]~~coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[31][18]

(1) Adoption of the Fair Allocation Plan – The ~~[Minister of Energy]~~[32]Delegate may , [by written ~~order~~declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this ~~Part~~Act, ~~[~~except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~Delegate in compliance with Section ~~•]~~7(4).

(2) Principles and Parameters[33] – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

[30] ~~This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.~~

[31][18] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current ~~Power Contracts~~procurement contracts and not invest in extending service lives to secure further ~~power~~procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] ~~Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).~~

[33] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

[34] ~~We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.~~

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*[35].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan ~~[~~shall~~]~~ specify ~~an objective methodology (~~the "~~Attribution Methodology~~")~~ for the purposes of allocating the Period

~~[35] Consider if a quantitative limit needs to be included in the legislation.~~

Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) ~~**[Confirmation][Review] of the Fair Allocation Plan** – [OEB?][36]~~**Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The ~~Financing Plan~~[37]IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting

~~[36] Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.~~

~~[37] Consideration will be given as to whether these details should be included in the Regulation.~~

market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare ~~and~~, Implement and Amend the Financing Plan** – ~~In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall~~The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the~~ adoption of a~~ Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a~~the Financing Plan, the ~~Minister of Energy~~Delegate may by written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a~~and amend the Financing Plan.

(2) ~~**Required**~~ **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~,~~ and parameters~~, requirements and conditions~~ set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy [~~Delegate or in accordance with the Regulation~~]~~.

(3) ~~**Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]~~**OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) ~~**Approval of Financing Plan –** The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative~~

Agent shall consider necessary for the Financing Plan to be approved by the OEB.[38] **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Consistency with the Fair Allocation Plan** – Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(5) **(6) Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]**Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **(7) Obligation to Apply IESO Remittances** – The AdministrativeFinancial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset OwnersAbsolute Assignees, or otherwise in respect of or

[38] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).

as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[39]

(7) ~~(8)~~ **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, ~~and~~any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) ~~(9)~~ **Incurrences are Binding** – ~~Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this ~~Part~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[40~~19~~]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the ~~[~~OEB~~]~~ shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].~~

(2) ~~(3)~~ **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part,~~

[39] ~~We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.~~

[40~~19~~] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article ~~is~~and any potential role for the Auditor General is still under consideration.

[41] ~~Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.~~

~~including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) the ~~collection by or attribution to such person of~~ administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.~~]~~[42]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[43][21]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of ~~Ratepayers~~Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect. The amount of Transition Charges determined ~~hereunder~~under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect.

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) ~~**(2) Undertaking and Agreement** – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or,~~ except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the ~~Regulatory Asset Owners, including any~~ Absolute ~~Assignee from time to time, and~~Assignees or any Pledgee from time to time~~[~~,~~including through the introduction of any bill or the passing of any legislation or regulation~~]~~.;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination

[42] ~~OPG has indicated that the risks and cost consequences to OPG of being an~~[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent ~~or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for~~of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role. ~~To be discussed.]~~

[43] ~~Under consideration~~[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[44]~~11.[22]~~]~~

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) ~~**(3)**~~ **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with ~~a Regulatory Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this ~~Part~~Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[44]22 Requested by Torys. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this ~~Part~~Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~a Regulatory Asset Owner~~an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article ~~12~~13- Miscellaneous~~45~~23

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this ~~Part~~Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this ~~Part~~Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this ~~Part~~Act, if any provision of this ~~Part~~Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this ~~Part~~Act that is taken by any person who is or may become obligated or have duties that arise under this ~~Part~~Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this ~~Part~~Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this ~~Part~~Act are intended to be

~~45~~23 OPG would like the specific amendments related to OPG to be included in the Bill.]

severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles, and Parameters, Requirements and Conditions for Establishing the Financing Plan

The Financing Plan shall have regard to the following principles, and parameters, requirements and conditions:[***Consider others.***] provide a guideline as to what a Financing Plan should address:

(1) the Financing Plan shall, in respect of each Reference Period, describemake reference to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of theIESO Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describeconsider alternative funding arrangements considered to be suitable for the purpose of fundingto fund the estimated IESO Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset Owners for such purpose;

(9) **(4)** such Funding Obligations shall reflectconsider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of eachfor a Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) the Financing Plan shall reflect the outcome of a financial model that incorporatesreflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical RatepayerRetail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from***

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

~~*time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.*~~]

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the ~~Regulatory Asset Owners~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the applicable ~~Regulatory Asset Owner~~Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note

trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owners~~Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

(16) the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1) **Powers and Abilities**:~~

~~a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;~~

~~b. Each Regulatory Asset Owner shall be authorized to:~~

~~i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;~~

~~ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and~~

~~iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;~~

~~c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;~~

~~d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;~~

~~e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and~~

~~f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.~~

~~(2) **Governance of Regulatory Asset Owner –** A Regulatory Asset Owner shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]~~

~~a. [Number of trustees]~~

~~b. [Replacement of trustees; vacancies; appointment of successors]~~

~~c. [Removal of trustees for neglect of duty or misconduct]~~

~~d. [Quorum and meetings]~~

~~e. [Fiduciary duty]~~

~~f. [Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]~~

~~g. [Delegation of powers and duties to administrative agents]~~

~~h. [Delegation of powers and duties to administrative agents]~~

(17)

Document comparison by Workshare Compare on Monday, April 10, 2017 11:00:11 PM

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Description	TOR_2528-#23107566-v8-"Fair_Hydro_Act"
Document 2 ID	PowerDocs://TOR_2528/23107566/9
Description	TOR_2528-#23107566-v9-"Fair_Hydro_Act"
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	596
Deletions	610
Moved from	25
Moved to	25
Style change	0
Format changed	0
Total changes	1256

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Feldman, Michael [mfeldman@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]; 'Smith, Elliot' [ESmith@osler.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:15:30
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY

<JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435
DIRECT
416.862.6666
FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

<image003.gif><http://www.osler.com/>
<image004.jpg>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron <aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Wortsman, Jerald <jwortsman@torys.com<mailto:jwortsman@torys.com>>; Bomhof, Scott <sbomhof@torys.com<mailto:sbomhof@torys.com>>; Estey, Bill <bestey@torys.com<mailto:bestey@torys.com>>; Watson, Gwen <gwatson@torys.com<mailto:gwatson@torys.com>>; James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>; Alan Hibben <alan.hibben@rogers.com<mailto:alan.hibben@rogers.com>>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>; O'Brian, Adam <aobrian@hunton.com<mailto:aobrian@hunton.com>>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>>; STOKES, BRYSON

<BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; VINER, JON
<JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>;
Brad.Purkis@tdsecurities.com<mailto:Brad.Purkis@tdsecurities.com>; Nelms, Scott (MOF)
(Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Smith, Elliot
<ESmith@osler.com<mailto:ESmith@osler.com>>; Sebastiano, Rocco
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>;
Michael.Boll@ieso.ca<mailto:Michael.Boll@ieso.ca>;
GZacher@stikeman.com<mailto:GZacher@stikeman.com>;
aobrian@hunton.com<mailto:aobrian@hunton.com>; Christie, Tim (ENERGY)
<Tim.Christie@ontario.ca<mailto:Tim.Christie@ontario.ca>>; Calwell, Carolyn (ENERGY/MEDEI/MRI)
<Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Johnson, Paul
(ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca<mailto:Paul.Johnson3@ontario.ca>>; Shear, Dan
(ENERGY) <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Rehob, James (ENERGY)
<James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; 'Gavin He'
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS)
<Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>;
kim.marshall@ieso.ca<mailto:kim.marshall@ieso.ca>; 'LEE John -TREASURY'
(john.s.lee@opg.com<mailto:john.s.lee@opg.com>)
<john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; Cox, Hilary (ENERGY)
<Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Hilloowala, Maharukh
<Maharukh.Hilloowala@tdsecurities.com<mailto:Maharukh.Hilloowala@tdsecurities.com>>; Wolff,
Michael <Michael.Wolff@tdsecurities.com<mailto:Michael.Wolff@tdsecurities.com>>; Holloway, Harold
<Harold.Holloway@tdsecurities.com<mailto:Harold.Holloway@tdsecurities.com>>; Akman, Steven
<Steven.Akman@tdsecurities.com<mailto:Steven.Akman@tdsecurities.com>>; Manii, David
<david.manii@tdsecurities.com<mailto:david.manii@tdsecurities.com>>; Nevison, Gary
<Gary.Nevison@tdsecurities.com<mailto:Gary.Nevison@tdsecurities.com>>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

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Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx>

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) **Principles and Parameters of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) **OEB Approval** – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) **Review of Financing Plan** – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) **Replacement of the Financial Services Manager** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) **Incurrences are Binding** – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

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[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Smith, Elliot [ESmith@osler.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
CC: Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 00:39:03

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435
DIRECT
416.862.6666
FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

Elliot Smith

Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

<image003.gif><http://www.osler.com/>
<image004.jpg>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron <aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Wortsman, Jerald <jwortsman@torys.com<mailto:jwortsman@torys.com>>; Bomhof, Scott <sbomhof@torys.com<mailto:sbomhof@torys.com>>; Estey, Bill <bestey@torys.com<mailto:bestey@torys.com>>; Watson, Gwen <gwatson@torys.com<mailto:gwatson@torys.com>>; James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>; Alan Hibben <alan.hibben@rogers.com<mailto:alan.hibben@rogers.com>>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>; O'Brian, Adam <aobrian@hunton.com<mailto:aobrian@hunton.com>>; Fitzpatrick, Michael F.

<MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>>; STOKES, BRYSON
<BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; VINER, JON
<JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>;
Brad.Purkis@tdsecurities.com<mailto:Brad.Purkis@tdsecurities.com>; Nelms, Scott (MOF)
(Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Smith, Elliot
<ESmith@osler.com<mailto:ESmith@osler.com>>; Sebastiano, Rocco
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>;
Michael.Boll@ieso.ca<mailto:Michael.Boll@ieso.ca>;
GZacher@stikeman.com<mailto:GZacher@stikeman.com>;
aobrian@hunton.com<mailto:aobrian@hunton.com>; Christie, Tim (ENERGY)
<Tim.Christie@ontario.ca<mailto:Tim.Christie@ontario.ca>>; Calwell, Carolyn (ENERGY/MEDEI/MRI)
<Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Johnson, Paul
(ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca<mailto:Paul.Johnson3@ontario.ca>>; Shear, Dan
(ENERGY) <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Rehob, James (ENERGY)
<James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; 'Gavin He'
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS)
<Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>;
kim.marshall@ieso.ca<mailto:kim.marshall@ieso.ca>; 'LEE John -TREASURY'
(john.s.lee@opg.com<mailto:john.s.lee@opg.com>)
<john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; Cox, Hilary (ENERGY)
<Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Hilloowala, Maharukh
<Maharukh.Hilloowala@tdsecurities.com<mailto:Maharukh.Hilloowala@tdsecurities.com>>; Wolff,
Michael <Michael.Wolff@tdsecurities.com<mailto:Michael.Wolff@tdsecurities.com>>; Holloway, Harold
<Harold.Holloway@tdsecurities.com<mailto:Harold.Holloway@tdsecurities.com>>; Akman, Steven
<Steven.Akman@tdsecurities.com<mailto:Steven.Akman@tdsecurities.com>>; Manii, David
<david.manii@tdsecurities.com<mailto:david.manii@tdsecurities.com>>; Nevison, Gary
<Gary.Nevison@tdsecurities.com<mailto:Gary.Nevison@tdsecurities.com>>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

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Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

<image001.gif>

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
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From: Smith, Elliot [ESmith@osler.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
CC: Niehaus, Katrina [Katrina.Niehaus@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; Fullerton, Rick [RFullerton@osler.com]; Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:19:05
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Attachment 4: image004.jpg

Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen

<gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Smith, Elliot <ESmith@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; aobrian@hunton.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; 'Gavin He' <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com) <john.s.lee@opg.com>; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>
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Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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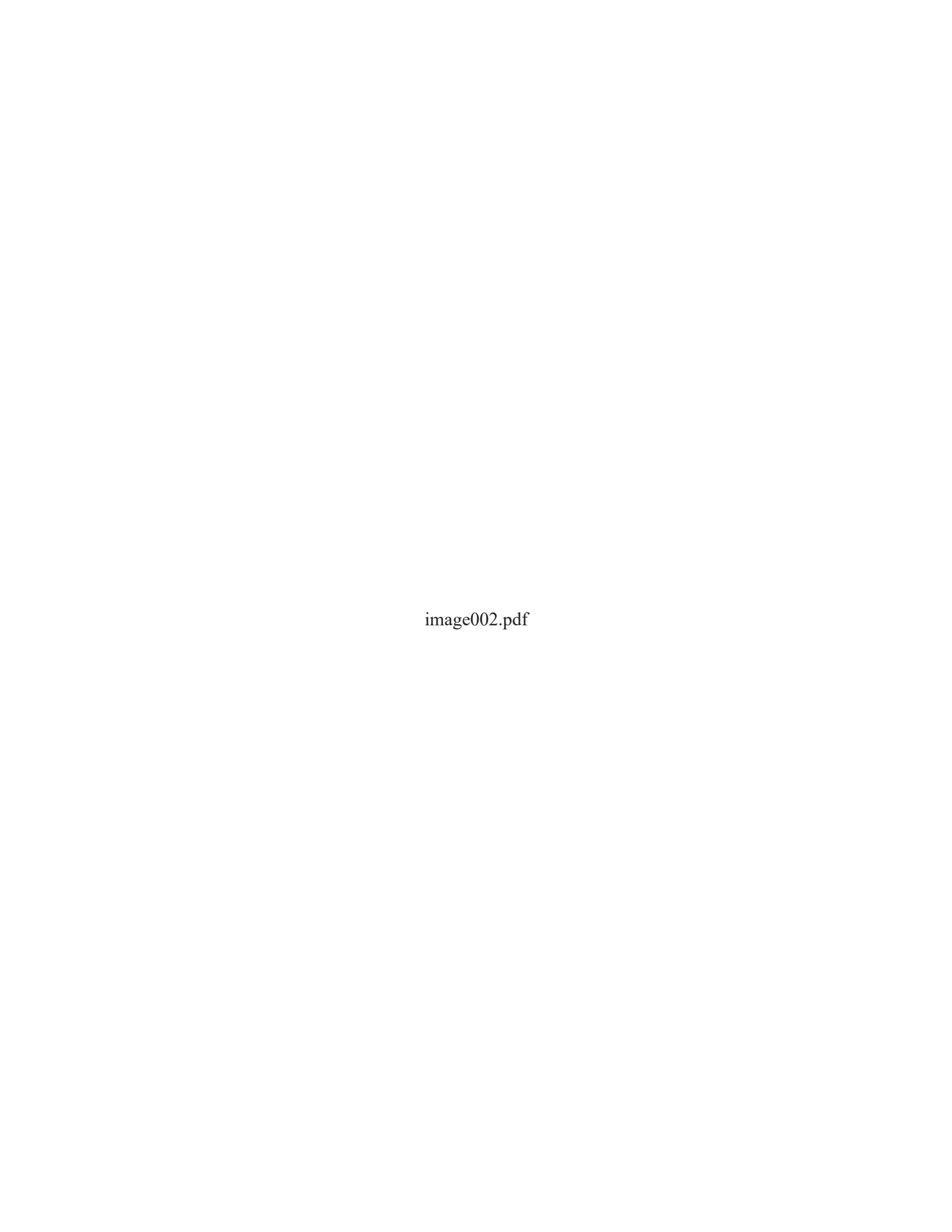
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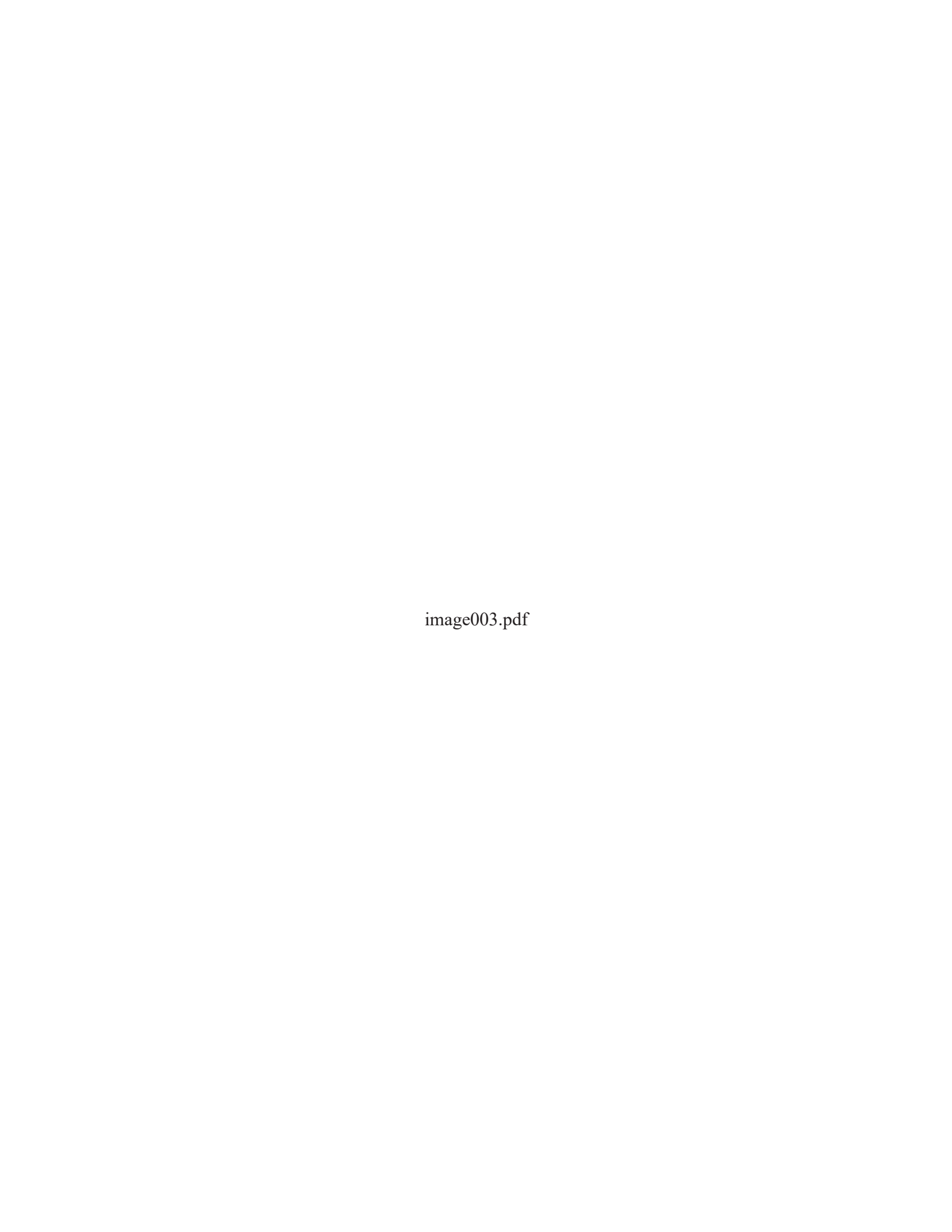
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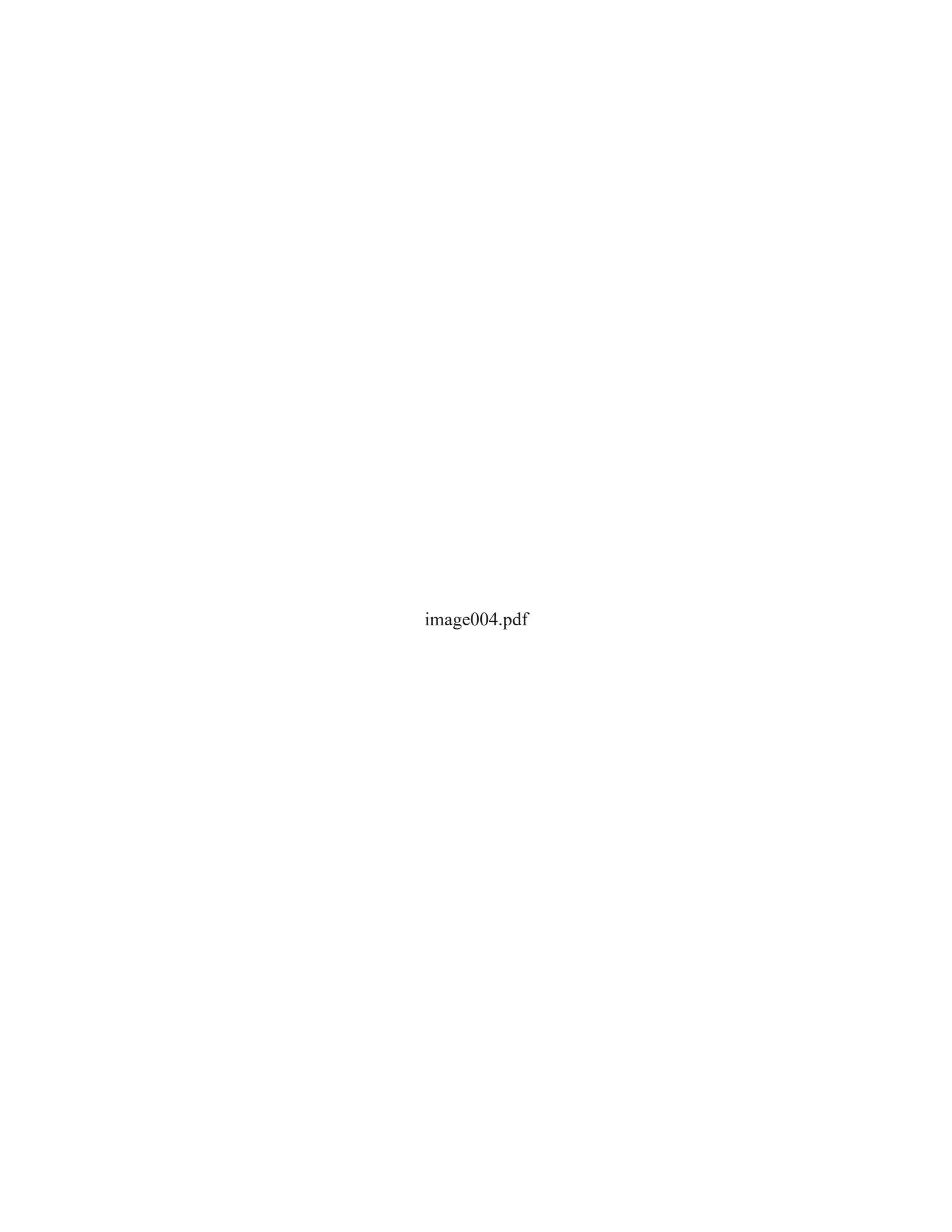
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From: Peter Hamilton [PHamilton@stikeman.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; ESmith@osler.com [ESmith@osler.com]; RSebastiano@osler.com [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 16:04:25
Attachment 1: image001.gif
Attachment 2: SETOR1-#6707378-v3-Fair_Hydro_Act.docx
Attachment 3: WSComparison__6707378_1-_6707378_3.pdf

Please see attached IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
www.stikeman.com

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To: Feldman, Michael; JACKSON, ADAM; Peter Hamilton; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.; STOKES, BRYSON; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca); ESmith@osler.com; RSebastiano@osler.com; Michael.Boll@ieso.ca; Glenn Zacher; aobrian@hunton.com; Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); 'Gavin He'; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary
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Partner

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Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan"). [NTD: The IESO has a number of comments on the

FAP: (i) Is it necessary to include this much detail in the FAP, as opposed to broadly referencing a FAP that will articulate principles/parameters for allocating future deferred amounts, etc., and which will be developed and/or set out in the Regs; (ii) while we appreciate the constitutional issues, we believe there risk in prescribing this much detail in purpose/objects and in how the FAP is engineered, which makes it easier to challenge. Is it not intended to provide for as much flexibility as possible?; (iii) is it intended that the 17% deferred amount is an outcome of the yet to be developed FAP?; (iv) the FAP is in essence a policy-based decision(s) and in the IESO's view would seem to have to necessarily be prepared by the Ministry, albeit with input from relevant experts, including the IESO, LDCs, etc. – as opposed to being delegated to experts]

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1] [NTD: Is this needed if OEB determines volumetric rate to recover Period Transition Charge?]

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the obligations of an Electricity Distributor under Article 5.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of an Electricity Distributor under Article 4.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by IESO, a Successor IESO or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] [NTD: is there a need to reference this requirement in the legislation?]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means any actual or purported sale, assignment or transfer of an Investment Interest to an Absolute Assignee, and "Dispose" shall have a corresponding meaning.

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[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

“Disposition Document” means any agreement, deed, conveyance, instrument or other document which relates to a Regulatory Asset or an interest therein. [ND: changes are intended to address partial circularity]

“Electricity Distributor” means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

“Electricity Distributor Remittances” means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received [or deemed to be received] [NTD: delete deeming language unless it is intended to provide for deemed collections] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

“Electricity Invoice” means an invoice issued by any of a Electricity Distributor (or by an Alternative Servicer) to a Retail Consumer that is served by the Electricity Distributor’s distribution system in accordance with Section 4(1) in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor’s designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act. [NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice.]

“Estimate” means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

“Estimated Future Green Transition Benefits” means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period by an Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges. [Should the Repayment Amount not be reduced to anticipate ordinary course refinancings by Finance Entities?]

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period [in respect of a Funding Obligation] [NTD: not all receipts may relate to a Funding Obligation] , including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period. [NTD: Make provision for receipts in respect of reserve accounts, i.e Funding Costs should be reduced by interest receipts on reserve accounts]

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by

or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means (i) the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

[NTD: Parking for a moment the commercial law issues around subordination, we are considering whether the conferral upon the IESO of a subordinated residual interest in the Transition Charges cash flow create consolidation issues. It may also impact our ability to book an asset.]

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Funding Costs" means, for a Reference Period, the funding costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution

Receipts payable to IESO for the month[7] [NTD: it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDC's entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages]. To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month based on information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or an IESO Successor prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the IESO Successor to recover payment of amounts payable by Electricity Distributors to IESO or the IESO Successor in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the aggregate net proceeds received by IESO from or on behalf of any Absolute Assignee as consideration for a Disposition prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means any entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to Section 6(2), which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

“Investment Remittance” means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

“Maximum IESO Recovery” means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

“Maximum Transition Charge Amount” means, for a Reference Period, the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group to such Reference Period in accordance with the Fair Allocation Plan. [NTD: When will there be visibility into this process and amount. Is this calculated on a monthly basis or for a Reference Period]

“Measurement Date” means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

“OEB” means the Ontario Energy Board, together with its successors.

“OPG” means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

“Over-Assessed Amount” means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

“Period Finance Charges” means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

“Period Transition Charges” means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period, calculated in accordance with Section 4(2). [Does this mean that any retained IESO Interest amount is necessarily repaid in the next “Relevant Period, subject to the Maximum Transition Charge Amount?”]

“Pledge” means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

“Pledgee” means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor or an Alternative Collection Agent, any bank account into which the Electricity Distributor or such Alternative Collection Agent deposits or receives Transition Charge Collections; (b) for the IESO or an IESO Successor, any bank account into which IESO or the IESO Successor deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the IESO Successor as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" [should be defined, perhaps in the regulations]

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length. [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Transition Charges.]

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. [Is the intent that IESO can recover the IESO retained interest only through the Transition Charges, subject to the Maximum Transition Charge Amount and after payment of the Assigned Interest?]

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer

to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees may appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, an Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

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[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable an IESO Successor shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable an IESO Successor shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any IESO Successor shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – (a) on each Settlement Date[13], IESO and if applicable an IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the Investment Interest to or to the account of the Absolute Assignees; and (b) on each Settlement Date[14], IESO and if applicable the IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the IESO Retained Interest to the IESO. [NTD: to discuss. I had thought that what we had discussed was that IESO could recover the IESO Retained Interest Amount not as part of the Transition Charges, but independently through its own processes. This would require an allocation, but not express subordination. If subordination is required together with a Maximum Transition Charge Amount, consider whether this puts IESO in the position of a residual interest holder and consider impact on ability to book asset, consolidation and prospectus.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[15], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, an Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations in respect of the Transition Charges otherwise required to be undertaken by such Electricity Distributor, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor, as applicable. Any Electricity Distributor that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

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[15] This is in anticipation of a possible future restructuring of the distribution system.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[16]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[17]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

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[16] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[17] Consider adding or substituting this provision for a right to appoint a receiver.

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the IESO Successor in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable an IESO Successor to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – [NTD: Addressed in Section 13(3)]. IESO may Dispose of all or any part of its interest in a Regulatory Asset in favour of an Absolute Assignee and, any such Disposition, when made, shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof. Upon any Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest expressed to be subject to the Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens or other adverse interests in favour of such other persons.

(4) **Validity of Pledges** – [NTD: Section 13(3)], a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security

interest in such proceeds shall be perfected pursuant to the PPSA.[18] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. [Covered by the PPSA]

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. [Add Default rights of a Pledgee]

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[19]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups

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[18] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

19 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition

Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset. [Is this different from the Regulatory Asset or the IESO Retained Interest?]

(2) **[NTD: Leave to agreements]**

(3) **Dispositions** – IESO may, from time to time, effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (c) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition. [NTD: Is (c) necessary?]

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(5) **IESO Financing Costs** – IESO may incur reasonable financing costs in order to finance its ownership of the IESO Retained Interest.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, any Alternative Servicer, any Alternative Collection Agent, IESO, any IESO Successor, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable

pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[20]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][21]

Article 11 – Undertaking of the Lieutenant Governor in Council[22]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection

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[20] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[21] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[22] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[23]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

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[23] Requested by Torys. For discussion.

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[24]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

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[24] OPG would like the specific amendments related to OPG to be included in the Bill.]

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[25]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required

[25] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan"). [NTD: The IESO has a number of comments on the FAP: (i) Is it necessary to include this much detail in the FAP, as opposed to broadly referencing a FAP that will articulate principles/parameters for allocating future deferred amounts, etc., and which will be developed and/or set out in the Regs; (ii) while we appreciate the constitutional issues, we believe there risk in prescribing this much detail in purpose/objects and in how the FAP is engineered, which makes it easier to challenge. Is it

not intended to provide for as much flexibility as possible?; (iii) is it intended that the 17% deferred amount is an outcome of the yet to be developed FAP?; (iv) the FAP is in essence a policy-based decision(s) and in the IESO's view would seem to have to necessarily be prepared by the Ministry, albeit with input from relevant experts, including the IESO, LDCs, etc. – as opposed to being delegated to experts]

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee

during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1] [NTD: Is this needed if OEB determines volumetric rate to recover Period Transition Charge?]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the ~~collection activities and activities of any~~obligations of an Electricity Distributor ~~or IESO~~ under Article ~~5, as agent for and on behalf of the Regulatory Asset Owners.~~5.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of ~~the Servicer~~an Electricity Distributor under Article ~~4, as agent for and on behalf of the Regulatory Asset Owners.~~4.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars),

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by ~~the Servicer~~IESO, a Successor IESO or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] [NTD: is there a need to reference this requirement in the legislation?]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means ~~an~~any actual or purported sale, assignment~~,~~ or transfer~~, conveyance, sale, contribution, set-over, exchange or other disposition~~ of an Investment Interest to an Absolute Assignee~~ pursuant to a Disposition Document.~~, and "Dispose" shall have a corresponding meaning.

"Disposition Document" means ~~the~~any agreement, deed, conveyance, instrument or other document~~ under~~ which relates to a Regulatory Asset ~~Owner effects a Disposition to an Absolute Assignee~~ or an interest therein. [ND: changes are intended to address partial circularity]

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received [or deemed to be received] [NTD: delete deeming language unless it is intended to provide for deemed collections] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any

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[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or ~~in its stead,~~ by an Alternative Servicer)~~, by the Servicer or by a Retailer, in each case~~ to a Retail Consumer that is served by the Electricity Distributor's distribution system in accordance with Section 4(1) in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act. [NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice.]

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period ~~in respect of the~~by an Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges. [Should the Repayment Amount not be reduced to anticipate ordinary course refinancings by Finance Entities?]

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or

establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period [in respect of a Funding Obligation] [NTD: not all receipts may relate to a Funding Obligation] , including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period. [NTD: Make provision for receipts in respect of reserve accounts, i.e Funding Costs should be reduced by interest receipts on reserve accounts]

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means (i) the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

[NTD: Parking for a moment the commercial law issues around subordination, we are considering whether the conferral upon the IESO of a subordinated residual interest in the Transition Charges cash flow create consolidation issues. It may also impact our ability to book an asset.]

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO ~~Financing~~Funding Costs" means, for a Reference Period, the ~~financing~~ funding costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.~~ [NTD: it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDC's entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages]. To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month based on information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or ~~if applicable the Alternative Collection Agent~~an IESO Successor prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor to recover payment of amounts payable by Electricity Distributors to IESO or the IESO Successor in accordance with Article 5.

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the aggregate net proceeds received by IESO from or on behalf of ~~each~~any Absolute Assignee as consideration for ~~the~~a Disposition ~~of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee~~ prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means ~~the~~any entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to ~~a Disposition~~Section 6(2), which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, ~~(a)~~ the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group to such Reference Period in accordance with the Fair Allocation Plan~~, divided by (b) the applicable~~. [NTD: When will there be visibility into this process and amount. Is this calculated on a monthly basis or for a Reference Period ~~Length.~~]

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period~~.~~, calculated in accordance with Section 4(2). [Does this mean that any retained IESO Interest amount is necessarily repaid in the next "Relevant Period, subject to the Maximum Transition Charge Amount?"]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor or an Alternative Collection Agent, any bank account into which the Electricity Distributor or such Alternative Collection Agent deposits or receives Transition Charge Collections; (b) for the ~~Servicer~~IESO or an IESO Successor, any bank account into which IESO or the IESO Successor deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~

~~deposits or receives Transition Charge Collections~~, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the ~~Alternative Collection Agent~~IESO Successor as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" ~~means any event specified as such in a Funding Obligation.~~ [should be defined, perhaps in the regulations]

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and

distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

~~"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.~~

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length. [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Transition Charges.]

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its

Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. [Is the intent that IESO can recover the IESO retained interest only through the Transition Charges, subject to the Maximum Transition Charge Amount and after payment of the Assigned Interest?]

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees ~~shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to~~may appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO, the Servicer,~~an Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. ~~Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.~~

~~**(10) No Set-Off or Reduction** – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.~~

(10) ~~**(11)**~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if

[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable ~~any Alternative Collection Agent~~an IESO Successor shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any ~~Alternative Collection Agent~~IESO Successor shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – ~~On~~(a) on each Settlement Date[13], IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~in respect of the Investment Interest to or to the account of the Absolute Assignees ~~an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii)~~; and (b) on each Settlement Date[14], IESO and if applicable the IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the IESO Retained Interest ~~Amount as of the Settlement Date.~~to the IESO. [NTD: to discuss. I had thought that what we had discussed was that IESO could recover the IESO Retained Interest Amount not as part of the Transition Charges, but independently through its own processes. This would require an allocation, but not express subordination. If subordination is required together with a Maximum Transition Charge Amount, consider whether this puts IESO in the position of a residual interest holder and consider impact on ability to book asset, consolidation and prospectus.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[~~14~~15], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, ~~the~~an Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor ~~or IESO~~, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations in respect of the Transition Charges otherwise required to be undertaken by such Electricity Distributor ~~or IESO~~, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor ~~or IESO~~, as applicable. Any Electricity Distributor ~~or IESO, as applicable,~~ that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to

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[~~14~~15] This is in anticipation of a possible future restructuring of the distribution system.

permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]16

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]17

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

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[15]16 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[16]17 Consider adding or substituting this provision for a right to appoint a receiver.

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted~~[NTD: Addressed in Section 13(3)]. IESO may Dispose of all or any part of its interest in a Regulatory Asset in favour of an Absolute Assignee and, any such Disposition, when made, shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition~~, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer.~~ . Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~, and upon such~~. Upon any Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest expressed to be subject to the Disposition~~, including all rights under the Investment Interest arising after such Disposition.~~ .

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens or other adverse interests in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province~~[NTD: Section 13(3)], a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement

under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][18] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).~~ [Covered by the PPSA]

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. [Add Default rights of a Pledgee]

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][19]

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[17][18] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][19] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail

Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset. [Is this different from the Regulatory Asset or the IESO Retained Interest?]

(2) ~~**Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~ **[NTD: Leave to agreements]**

(3) **Dispositions** – IESO may, from time to time, effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the ~~Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the~~ Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (~~d~~c) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition. [NTD: Is (c) necessary?]

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~ and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly~~

~~permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement~~.

(5) **IESO Financing Costs** – IESO ~~shall be entitled in good faith to~~may incur reasonable financing costs ~~(including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears,~~ in order to finance its ownership of the IESO Retained Interest ~~from time to time.~~ .

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, ~~IESO,~~ any Alternative Servicer, any Alternative Collection Agent, IESO, any IESO Successor, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure.~~ defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[~~19~~20]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][~~20~~21]

Article 11 – Undertaking of the Lieutenant Governor in Council[~~21~~22]

[~~19~~20] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[~~20~~21] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[~~21~~22] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~11.~~[22] 11.[23]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other

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~~22~~23 Requested by Torys. For discussion.

documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[~~23~~24]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

[~~23~~24] OPG would like the specific amendments related to OPG to be included in the Bill.]

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule ~~3~~[24]3[25]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that

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[24][25] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to

time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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Style change	
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~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	117
Deletions	102
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	223

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Feldman, Michael [mfeldman@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]; 'Smith, Elliot' [ESmith@osler.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:15:30
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY

<JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435
DIRECT
416.862.6666
FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

<image003.gif><http://www.osler.com/>
<image004.jpg>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron <aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Wortsman, Jerald <jwortsman@torys.com<mailto:jwortsman@torys.com>>; Bomhof, Scott <sbomhof@torys.com<mailto:sbomhof@torys.com>>; Estey, Bill <bestey@torys.com<mailto:bestey@torys.com>>; Watson, Gwen <gwatson@torys.com<mailto:gwatson@torys.com>>; James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>; Alan Hibben <alan.hibben@rogers.com<mailto:alan.hibben@rogers.com>>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>; O'Brian, Adam <aobrian@hunton.com<mailto:aobrian@hunton.com>>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>>; STOKES, BRYSON

<BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; VINER, JON
<JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>;
Brad.Purkis@tdsecurities.com<mailto:Brad.Purkis@tdsecurities.com>; Nelms, Scott (MOF)
(Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Smith, Elliot
<ESmith@osler.com<mailto:ESmith@osler.com>>; Sebastiano, Rocco
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>;
Michael.Boll@ieso.ca<mailto:Michael.Boll@ieso.ca>;
GZacher@stikeman.com<mailto:GZacher@stikeman.com>;
aobrian@hunton.com<mailto:aobrian@hunton.com>; Christie, Tim (ENERGY)
<Tim.Christie@ontario.ca<mailto:Tim.Christie@ontario.ca>>; Calwell, Carolyn (ENERGY/MEDEI/MRI)
<Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Johnson, Paul
(ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca<mailto:Paul.Johnson3@ontario.ca>>; Shear, Dan
(ENERGY) <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Rehob, James (ENERGY)
<James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; 'Gavin He'
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS)
<Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>;
kim.marshall@ieso.ca<mailto:kim.marshall@ieso.ca>; 'LEE John -TREASURY'
(john.s.lee@opg.com<mailto:john.s.lee@opg.com>)
<john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; Cox, Hilary (ENERGY)
<Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Hilloowala, Maharukh
<Maharukh.Hilloowala@tdsecurities.com<mailto:Maharukh.Hilloowala@tdsecurities.com>>; Wolff,
Michael <Michael.Wolff@tdsecurities.com<mailto:Michael.Wolff@tdsecurities.com>>; Holloway, Harold
<Harold.Holloway@tdsecurities.com<mailto:Harold.Holloway@tdsecurities.com>>; Akman, Steven
<Steven.Akman@tdsecurities.com<mailto:Steven.Akman@tdsecurities.com>>; Manii, David
<david.manii@tdsecurities.com<mailto:david.manii@tdsecurities.com>>; Nevison, Gary
<Gary.Nevison@tdsecurities.com<mailto:Gary.Nevison@tdsecurities.com>>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

<image001.gif>

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx>

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Blackline_Summary.pdf

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

---

[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

RE_ Feedback requested (procurement related).rtf

From: Monteiro, Belinda (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lo, Tom (TBS) [Tom.Lo@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Cheung, Clara (TBS) [Clara.Cheung@ontario.ca]
Subject: RE: Feedback requested (procurement related)
Date: Monday, May 29, 2017 10:19:57
Attachment 1: award memo complex accounting services GBEs to LSB.docx
Attachment 2: SOW - KPMG bm edits.docx

Hi Nadine: Please see my comments in tracked changes.

Thank you.

Belinda Monteiro

Senior Controllership Analyst

Treasury Board Secretariat

77 Wellesley St W, 5th Floor

Ferguson Block

Toronto, Ontario M7A 1N3

Email: Belinda.monteiro@ontario.ca

From: Petsche, Nadine (TBS)
Sent: May 26, 2017 12:24 PM
To: Lo, Tom (TBS); Monteiro, Belinda (TBS)
Cc: Virani, Shyrose (TBS)
Subject: Feedback requested (procurement related)
Importance: High

Tom/Belinda,

Attached are documents related to a procurement of external services related to complex accounting matters. I would like to submit for Karen's signature on Monday, so that we can engage the firm on June 1st as planned. The work to be done is fairly time-sensitive and related to the electricity sector. Please advise of any issues/concerns.

Thanks in advance.

Nadine

award memo complex accounting services GBEs to LSB.pdf

Treasury Board Secretariat

Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Memo | TBS

May 26, 2017

MEMORANDUM TO: Karen Hughes
Associate Deputy Minister of Finance
Treasury Board Secretariat

FROM: Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

SUBJECT: **Memo to Award Contract for Complex Accounting Services**

With this memo, I am updating you on my decision to proceed with awarding a contract to KPMG LP with a ceiling price of $299,000 plus HST.

As you are aware, earlier this year a Request for Services (RFS) was issued for Complex Accounting Services. As part of the competitive process, an RFS was issued to five vendors on the Management Consulting Services VOR for complex accounting support which covered the following support for accounting analysis related to Ontario's energy sector:

- Consolidation of the Province's electricity sector entities,
- Control assessments related to electricity sector entities,
- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.

Three submissions were received in response to the invitation to quote. The three submissions were reviewed independently by myself and a Manager in the APFR section against the criteria outlined in the RFS document, which included experience and qualifications, and pricing.

Based on the results of the assessments, KPMG LP had the highest overall ranking in both assessments. I will be engaging KPMG LP to provide actuarial support services to the Office of the Provincial Controller, pending your written agreement.

KPMG's team will be well positioned to support OPCD on energy sector related accounting matters. Their extensive experience includes:

- Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017

…/2

- Advisory services around interpretation, and application of IFRS related to Hydro One and OPG
- Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts*
- Deep knowledge in accounting for the effect of rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks
- Control assessment related to Hydro One under PSAB standards
- Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada.
- Experience and knowledge with IPSASB standards.

The attached draft Statement of Work has been drafted to reflect the deliverables and timing associated with the complex accounting services under this contract.

As per the TBS FDOA for Consulting Services Agreements valued at or above $100,000, prior written approval from the Deputy Head on the selected vendor and the proposed Agreement is required before the proposed Agreement is signed. In TBS for Consulting Services Agreements valued at or above $100,000 and up to $750,000, the Deputy Minister has delegated this authority to the individual who granted the spending authority for the contract, which is the Associate Deputy Minister.

Commented [MB(1]: Is this correct? My records indicate director approval was requested

As the contract is estimated to be less than $299,999 only my approval is required to award the contract. With this memorandum, I am advising you of my decision and request that you sign this document as evidence of agreement with the vendor selection.

Commented [MB(2]: Contradicts the earlier para

Recommendation:

~~As the contract is estimated at $299,000 (tax excluded) your approval is requested to award the contract to KPMG LP for a period of 15 months (June 1, 2017 to August 30, 2018) with a 3 month extension option in favour of the ministry with no increase in ceiling price.~~

Commented [MB(3]: If the above para holds this para seems redundant

Regards,

Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

I agree with the vendor selection:

Karen Hughes
Associate Deputy Minister

c. Patrick Laughton

CAUTION - THIS FILE RELATES TO A MATTER IN WHICH CINDY VEINOT MAY HAVE HAD A CONFLICT OF INTEREST IN THE PERIOD BEFORE SHE BECAME A PUBLIC SERVANT.

THIS FILE MUST NOT BE SHOWN TO OR DISCUSSED WITH CINDY VEINOT.

SOW - KPMG bm edits.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 1, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000**

4. *Project Start Date:* **June 1, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 3 months with no increase to the ceiling price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

Commented [MB(1]: Next para mentions 4 months please clarify.

Commented [MB(2]: If I recall you estimated the project to cost 230K and the follow-on work to cost 70K. But now your procurement has come in at 299K so you really have no margin for follow-on work here and should delete this para unless you seek higher approvals that includes an estimated follow-on before you sign the contract.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* - The Vendor must describe its process for keeping the Client informed of status, including progress reports and any other types of reports or reporting requirements, and the frequency of reporting.

9. *Contingency Plan* – The Vendor must identify potential areas where problems may arise, and the plan for minimizing risk to the Client.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements ~~that outline the per diem charges~~ no later than 10 Billing Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** ~~all billing information as set out in the Master Agreement~~.

14. *Names and Roles of Vendor's Personnel:*

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to Ontario's Cap and Trade policy ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

RE_ Feedback requested (procurement related).rtf

From: Lo, Tom (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Feedback requested (procurement related)
Date: Friday, May 26, 2017 15:46:47
Attachment 1: award memo complex accounting services GBEs to LSB (TBS LSB Comments 20170526).docx
Attachment 2: KPMG TBS-OTB-OPCD 21 (TBS LSB Comments 20170526).docx

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PRIVILEGED AND CONFIDENTIAL

Nadine:

My comments are attached.

Due to the very short turnaround time to review the Statement of Work, I have not reviewed the RFS to confirm that the Statement of Work is consistent with the RFS. I trust that previously provided legal advice was taken into account as part of the RFS development process and that the attached Statement of Work properly reflects the services and pricing model set out in the RFS.

Please let me know if you have any questions arising out of my comments.

I have not copied Belinda on my response, but it can be shared with her if required.

(Note: I will be leaving at 5pm today and will be out of town this weekend. I will respond to any emails on Sunday night or Monday morning.)

Regards,

Tom

From: Petsche, Nadine (TBS)
Sent: May-26-17 12:24 PM

To: Lo, Tom (TBS); Monteiro, Belinda (TBS)
Cc: Virani, Shyrose (TBS)
Subject: Feedback requested (procurement related)
Importance: High

Tom/Belinda,

Attached are documents related to a procurement of external services related to complex accounting matters. I would like to submit for Karen's signature on Monday, so that we can engage the firm on June 1st as planned. The work to be done is fairly time-sensitive and related to the electricity sector. Please advise of any issues/concerns.

Thanks in advance.

Nadine

award memo complex accounting services GBEs to LSB (TBS LSB Comments 20170526).pdf

Treasury Board Secretariat

Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Memo | TBS

May 26, 2017

MEMORANDUM TO: Karen Hughes
Associate Deputy Minister of Finance
Treasury Board Secretariat

FROM: Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

SUBJECT: **Memo to Award Contract for Complex Accounting Services**

With this memo, I am updating you on my decision to proceed with awarding a ~~contract~~ Statement of Work to KPMG LLP **[Note to OPCD: The Statement of Work refers to KPMG as "KPMG LLP". The vendor list on Supply Chain's website indicates the Vendor as "KPMG LLP" as well.]** with a ceiling price of $299,000 plus HST.

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As you are aware, earlier this year a Request for Services (RFS) was issued for Complex Accounting Services. As part of the competitive process, an RFS was issued to five vendors on the Management Consulting Services VOR for complex accounting support which covered the following support for accounting analysis related to Ontario's energy sector:

- Consolidation of the Province's electricity sector entities,
- Control assessments related to electricity sector entities,
- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.

Three submissions were received in response to the ~~invitation to quote~~RFS process. The three submissions were reviewed independently by myself and a Manager in the APFR section against the criteria outlined in the RFS document, which included experience and qualifications, and pricing.

Based on the results of the assessments, KPMG LLP had the highest overall ranking in both assessments. I will be engaging KPMG LLP to provide actuarial support services to the Office of the Provincial Controller, pending your written agreement.

KPMG's team will be well positioned to support OPCD on energy sector related accounting matters. Their extensive experience includes:

- Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017

…/2

- Advisory services around interpretation, and application of IFRS related to Hydro One and OPG
- Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts*
- Deep knowledge in accounting for the effect of rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks
- Control assessment related to Hydro One under PSAB standards
- Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada.
- Experience and knowledge with IPSASB standards.

The attached draft Statement of Work has been drafted to reflect the deliverables and timing associated with the complex accounting services ~~under this contract~~being provided under the Statement of Work.

As per the TBS FDOA for Consulting Services Agreements valued at or above $100,000, prior written approval from the Deputy Head on the selected vendor and the proposed Agreement is required before the proposed Agreement is signed. In TBS for Consulting Services Agreements valued at or above $100,000 and up to $750,000, the Deputy Minister has delegated this authority to the individual who granted the spending authority for the contract, which is the Associate Deputy Minister.

As the ~~contract~~ Statement of Work is estimated to be less than $299,999 only my approval is required to award the ~~contract~~Statement of Work. [**Note to OPCD: I defer to Belinda on TBS FDOA, but there is nothing above describing delegation by the Associate Deputy Minister to a Director, which is what is required for Director sign-off in this case.**] With this memorandum, I am advising you of my decision and request that you sign this document as evidence of agreement with the vendor selection.

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Recommendation:

As the ~~contract~~ Statement of Work is estimated at $299,000 (tax excluded), ~~I will be awarding the your approval is requested to award the contract~~Statement of Work to KPMG LLP for a period of 15 months (June 1, 2017 to August 30, 2018) with a 3 month extension option [**Note to OPCD: The paragraph above indicates that only Director-level approval is required. If this is not the case, disregard the highlighted language and delete/amend the paragraph above.**

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Also, confirm whether the extension option is for 3 months or 4 months. See the note in the Statement of Work regarding the extension option.] in favour of the ministry with no increase in ceiling price.

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Regards,

Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

I agree with the vendor selection:

Karen Hughes
Associate Deputy Minister

c. Patrick Laughton

~~CAUTION - THIS FILE RELATES TO A MATTER IN WHICH CINDY VEINOT MAY HAVE HAD A CONFLICT OF INTEREST IN THE PERIOD BEFORE SHE BECAME A PUBLIC SERVANT.~~

~~THIS FILE MUST NOT BE SHOWN TO OR DISCUSSED WITH CINDY VEINOT.~~ [Note to OPCD: Since Cindy was with Deloitte and not KPMG, this disclaimer is not required.]

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KPMG TBS-OTB-OPCD 21 (TBS LSB Comments 20170526).pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 1, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000**, plus HST

4. *Project Start Date:* **June 1, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 3 months with no increase to the ~~ceiling price~~Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the ~~agreement~~ Statement of Work for up to 4 additional months. **[Note to OPCD: Confirm whether it is 3 or 4 months. In the "Project End Date" above, you reference a 3 month extension.]**, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement. **[Note to OPCD: Please note that additional procurement approvals may be required for the follow-on work. Belinda's team can advise OPCD on the appropriate approvals required, if any.]**

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities

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- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
- If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

[Note to OPCD: This description should be consistent with the RFS description. To the extent the Vendor's submission contains deliverables that you want to ensure is provided by the Vendor, add it to this section.]

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* — Within [x] days following the entering into of this Statement of Work, t~~T~~he Vendor must describe its process for keeping the Client informed of status, including progress reports and any other types of reports or reporting requirements, and the frequency of reporting. If the description and frequency are accepted by the Client, the Vendor agrees to comply with them. **[Note to OPCD: If the process and frequency has already been described in the Vendor's submission, use the following:** The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission, no less frequent that [insert timeframe].]

9. *Contingency Plan* – Within [x] days following the entering into of this Statement of Work, T~~t~~he Vendor must identify potential areas where problems may arise, and the plan for minimizing risk to the Client. If the plan is accepted by the Client, the Vendor shall comply with the plan. **[Note to OPCD: If the process and frequency has already been described in the Vendor's submission, use the following:**

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the ~~p~~Per ~~d~~Diem Rate charges no later than 10 Business ~~Billing~~ Days. [Note to OPCD: There is no defined term in the Master Agreement called "Billing Days". Therefore, I have replaced "Billing" with "Business". If there is a difference, you should define Billing Day in this Statement of Work.] after the end of each quarter.**

[Note to OPCD: As previously advised on other procurements, the Management Consulting Service VOR arrangement is intended to be used for fixed price projects. This provision suggests that a Per Diem Rate model is being used. While the Master Agreement does contemplate the possibility of billing on a Per Diem Rate basis, it was intended for Change Orders.

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~~13.~~ **If a fixed price model was set out in the RFS, the billing and payment process should reflect it (e.g. payment upon achieving certain milestones, etc.)]**

Billing statements should include all billing information as set out in the Master Agreement.

14. *Names and Roles of Vendor's Personnel:*

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

[NOTE TO OPCD: The Rate(s) (i.e. fixed price and/or Per Diem Rate) should be set out somewhere in this Statement of Work.]

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

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16. *Knowledge Transfer:* The Vendor will work closely with the ~~c~~Client to ensure knowledge transfer to the ~~c~~Client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site **[Note to OPCD: There is no reference to the "Collaboration Site" in this Statement of Work. If there may be any ambiguity as to what the "Collaboration Site" is, consider inserting further details.]** which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. ~~"~~Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to Ontario's Cap and Trade policy **[Note to OPCD: The work contemplated in this Statement of Work does not appear to be related to Cap and Trade. If this restriction is required to prevent the Vendor from bidding or assisting on future engagements/transactions, please ensure that the nature of the future transaction is properly described. We assume that Vendors were made aware of this restriction in the RFS. If not, KPMG may raise concerns about this provision when it receives the Statement of Work.]** ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – ~~t~~The indemnity set out in the Master Agreement applies to this ~~assignment~~Project. **[Note to OPCD: This provision is not necessary to include as the indemnities set out in the Master Agreement apply even without this statement. That being said, it is fine to keep in as well.]**

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

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Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

RE_ Follow up to our recent discussion (IFRS impact analysis).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Date: Wednesday, December 09, 2015 11:00:48

Thanks! Shyrose will send an invite. Talk to you soon. Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: December 9, 2015 10:00 AM
To: Petsche, Nadine (TBS)
Cc: Virani, Shyrose (TBS)
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)

Hi Nadine,

I am available tomorrow anytime.

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, December 09, 2015 9:53 AM
To: Picard, Michel
Cc: Virani, Shyrose (TBS)
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Importance: High

Hi Michel.

Just following up on my note below. If you have a few minutes to chat today or tomorrow, it would be appreciated. Thanks. Nadine

From: Petsche, Nadine (TBS)
Sent: December 3, 2015 2:37 PM
To: Picard, Michel (mpicard@kpmg.ca)
Cc: Virani, Shyrose (TBS)
Subject: Follow up to our recent discussion (IFRS impact analysis)

Hi Michel.

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I am currently out of the office, but perhaps we can set up a short call for early next week to discuss?

Thanks in advance.

Nadine

Can you provide clarification regarding OPG's ability to continue rate regulated asset treatment for non-discount rate changes in the year of an ONFA update? You mentioned that IFRS is more rigid in its application of rate regulated accounting, but I would have thought that as long as the types of costs are recoverable under US GAAP (regardless of timing), that they would continue to be reflected on OPG's balance sheet.

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is generally expected that the full amount of IFRS-US GAAP accounting differences for ARO related to these stations would be captured by a regulatory balance. However, this is not the case for some differences related to the Pickering and Darlington facilities because the OEB recovery methodology for these stations does not include an accounting accretion expense component for the time value of money.

Non-discount rate changes can include changes in economic assumptions (e.g., escalation rates), operating assumptions, timing of cash flows, used fuel or waste volumes, and the like. All of these are revaluated in a comprehensive manner in conjunction with each ONFA reference plan update. It has also been OPG's practice under US GAAP (and IFRS) to adjust the accounting ARO for certain non-discount rate changes if they occur between ONFA reference plan updates, provided the change is known, material and identifiable. An example of this would be the anticipated change to the accounting service lives of the Bruce B units following announcement of a contract for their refurbishment. As noted in response to Question 2, in and of itself, making a change between ONFA reference plan updates for a factor such as station end-of-life dates is not expected to trigger a change to OPG's IFRS discount rate established at the time of the most recent ONFA reference plan update.

Whether part of a comprehensive revaluation in conjunction with the ONFA reference plan update or not, where non-discount rate changes impact ARO lifecycle costs that are accounted for differently under IFRS and US GAAP, the full value of the differences for Pickering and Darlington is not expected to be offset by a regulatory balance. The regulatory balance recognized for these stations would be the US GAAP value expected to be recovered from, or repaid to ratepayers in the future.

For example, under IFRS, a change in certain lifecycle costs associated with previously generated nuclear waste or fuel would be expensed in full in the current period, whereas these costs would be capitalized by OPG under US GAAP. The IFRS expense would be measured using the IFRS discount rate; the US GAAP capitalized costs would be calculated using the US GAAP discount rate. Given that the accounting accretion expense for Pickering and Darlington is not recoverable under the OEB methodology, the IFRS regulatory balance would be recorded based on the US GAAP recoverable amount (i.e. the amount capitalized under US GAAP). This means that the portion of IFRS expense equal to the difference between IFRS and US GAAP amounts due to different discount rates would not be offset by a regulatory balance, resulting in income statement volatility under IFRS.

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RE_ Follow up to our recent discussion (IFRS impact analysis).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Date: Wednesday, December 09, 2015 11:00:18

Hi Nadine,

I am available tomorrow anytime.

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, December 09, 2015 9:53 AM
To: Picard, Michel
Cc: Virani, Shyrose (TBS)
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Importance: High

Hi Michel.

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Sent: December 3, 2015 2:37 PM
To: Picard, Michel (mpicard@kpmg.ca)
Cc: Virani, Shyrose (TBS)
Subject: Follow up to our recent discussion (IFRS impact analysis)

Hi Michel.

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RE_ Follow up to our recent discussion (IFRS impact analysis).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Date: Wednesday, December 09, 2015 10:53:22

Hi Michel.

Just following up on my note below. If you have a few minutes to chat today or tomorrow, it would be appreciated. Thanks. Nadine

From: Petsche, Nadine (TBS)
Sent: December 3, 2015 2:37 PM
To: Picard, Michel (mpicard@kpmg.ca)
Cc: Virani, Shyrose (TBS)
Subject: Follow up to our recent discussion (IFRS impact analysis)

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RE Follow up to our recent discussion (IFRS impact analysis).pdf

From:	Virani, Shyrose (TBS)
To:	Picard, Michel (mpicard@kpmg.ca); Petsche, Nadine (TBS)
Subject:	RE: Follow up to our recent discussion (IFRS impact analysis)
Start:	December 10, 2015 2:00:00 PM
End:	December 10, 2015 2:30:00 PM
Location:	Michel to call Nadine at 416-325-8027

From: Petsche, Nadine (TBS) [<mailto:Nadine.Petsche@ontario.ca> mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, December 09, 2015 9:53 AM
To: Picard, Michel
Cc: Virani, Shyrose (TBS)
Subject: RE: Follow up to our recent discussion (IFRS impact analysis)
Importance: High

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* <http://www.kpmg.com/Ca/en/Pages/Disclaimer-Tax.aspx> Disclaimer concerning tax advice (<http://www.kpmg.com/Ca/en/Pages/Disclaimer-Tax.aspx> http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ For your attention.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: RE: For your attention
Date: Thursday, March 23, 2017 09:15:41

All my contracts with the Province stipulate the same requirements. I do not think that this is an issue.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:08 AM
To: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: For your attention
Importance: High

KPMG
Would absolutely agree. Copying Michel on this note so he can confirm. N
Original Message
From: Schwab-Pflug, Emma (ENERGY)
Sent: Thursday, March 23, 2017 8:43 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine, we're discussing. I'm asking Musab but would you know if KPMG weighed in on this also? It will help inform decision to accept risks.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)
Sent: Thursday, March 23, 2017 8:34 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: RE: For your attention

Emma,
You likely saw the note regarding the TMH directive. It's an important point that I was sure we had covered in length. Hoping that you/Musab/Usman can confirm ASAP so that Stephen can make the changes. n

-----Original Message-----
From: Schwab-Pflug, Emma (ENERGY)
Sent: March 23, 2017 8:05 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine - fyi, I'm at an all day meeting at the IESO today, will be on email and on call. Could you also keep Usman and Musab informed of new items? Thanks again for all your help.

- Emma

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)

Sent: Thursday, March 23, 2017 8:02 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: Fw: For your attention

Hi Emma. Just to keep you in the loop. N

Original Message
From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Thursday, March 23, 2017 6:25 AM
To: ASHBOURNE, STEPHEN
Cc: PRESTAGE, JA
Subject: Re: For your attention

Hi Stephen. I understand, but the reference noted still suggests that compliance with the directive itself (in full form) would be required. It should just be modified to refer to reference the principles as opposed to 'limitations in the directive' which is very different. N

Original Message
From: ASHBOURNE, STEPHEN
Sent: Thursday, March 23, 2017 6:04 AM
To: Petsche, Nadine (TBS)
Cc: PRESTAGE, JA
Subject: Re: For your attention

I think we're no longer contemplating attaching the full Policy. We dropped in your few summary points describing the "principles" in a generic way - did you see that?

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Mar 22, 2017, at 8:46 PM, Petsche, Nadine (TBS)
<Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>> wrote:

Stephen,
I'm just updating my control analysis based on the latest version of the Declaration and the TPA. I came across the following extract which also needs to be revised to reflect reference to 'principles' of the directive only. Sorry for the late notice. Just saw it now. n

Declaration

Power to Pay Trustee's Fees. The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is

attached as Exhibit 1 to the Principles Annex.

_____

[cid:imagea0b2fc.GIF@b9e8d051.4397a308]

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199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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Re_ EXTERNAL - GA Financing.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: EXTERNAL - GA Financing
Date: Sunday, February 12, 2017 16:55:41

Would have to ensure that this type of activity is permitted by the OEB and the impact on their metric and rating.

If the sister company was set-up as a GBE then it would be fine.

Sent from my iPhone

On Feb 12, 2017, at 15:47, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>> wrote:

If the intangible asset were in OPG directly vs. a sub, it would be accounted for under US GAAP/IFRS – we wouldn't have to consider PSAB.

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February-12-17 3:44 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: FW: EXTERNAL - GA Financing

Cindy, Nadine,

I believe what PWC and John have in mind is the intangible asset which is what is included in the Long island Power Authority's financial statements since 2013.

From: Picard, Michel
Sent: Sunday, February 12, 2017 3:41 PM
To: 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com<mailto:alec.cheng@opg.com>>
Subject: FW: EXTERNAL - GA Financing

Alec,

How is different than the asset in Long Island Power Authority?

4126 560 2569

From: Nelms, Scott (ENERGY) [mailto:Scott.Nelms@ontario.ca]
Sent: Sunday, February 12, 2017 2:06 PM
To: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: FW: EXTERNAL - GA Financing

Hi Michel,

See the following update from OPG. Sounds like you may get a call from PWC. Will pass on more if/when I see it.

Thanks,
Scott

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: February-12-17 1:54 PM
To: Nelms, Scott (ENERGY)
Cc: MAUTI John -FIN & C CTRL
Subject: RE: EXTERNAL - GA Financing

Met with Pwc late Friday. Not a reg asset but they think OPG Finance Co could set up an asset similar to a royalty or franchise fee concept where OPG has the rights to a portion of future cash flows. May be an intangible asset rather than a financial one.

Problem is whether such legislation would have that asset survive on consolidation since it's that legislation that gave rise to this future right and it's the Province enacting this legislation. Relayed this onto the Provincial controllers office and I think they have EY looking into it.

We're pulling out all the stops to try to make this work.

We'll circle back with Pwc who is following up with their government accounting expert.

Ken fully in the loop as I know there's a meeting Monday afternoon to discuss.

Thanks

From: Nelms, Scott (ENERGY) [mailto:Scott.Nelms@ontario.ca]
Sent: Sunday, February 12, 2017 1:25 PM
To: MAUTI John -FIN & C CTRL
Subject: EXTERNAL – GA Financing

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Hi John,

I wanted to circle back on the accounting issue from Friday. My sense is that creating a regulatory asset for OPG is going to be difficult. Have you heard any progress? I am going to get asked tomorrow, how things are going, so if you hear anything please let me know. Is anything the Province can do in legislation to bolster the case that this is OPG's cost?

IIs there any way OPG could finance all of its portion of GA, thereby reducing its annual revenue requirement (akin to nuclear smoothing but on a larger scale)? I realize this would impact OPG's liquidity and solvency ratios. If all borrowing comes from OFA, does the accounting even work? This is a long shot, but I want to make sure we have turned over every stone.

Thanks,
Scott

Scott Nelms
Investment and Governance Secretariat | Ministry of Energy
7th Floor | 77 Grenville St | Toronto, ON
w: (416) 212-6469 | c: (647) 330-2681
scott.nelms@ontario.ca<mailto:scott.nelms@ontario.ca>

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Re_ EXTERNAL - New thinking.rtf

From: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
To: Picard, Michel [mpicard@kpmg.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Imbrogno, Serge (ENERGY) [Serge.Imbrogno@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Ouellette, Lois A [louellette@kpmg.ca]; Betik, Matthew [mbetik@kpmg.ca]; HARTWICK Ken -FINANCE [ken.hartwick@opg.com]
Subject: Re: EXTERNAL - New thinking
Date: Saturday, February 25, 2017 22:46:20

Normally, in a related party transaction, one party would set up an asset the other party should have a liability (or a reduction of asset). Given this principle, in my view, the proper accounting should be a hit to the Province or IESO books to offset the asset on the sale to OPG reflecting the sale of future cash inflows. Without a regulatory asset, this would result in the deferred amount flowing through the provincial deficit.

Original Message
From: Picard, Michel
Sent: Saturday, February 25, 2017 6:03 PM
To: MAUTI John -FIN & C CTRL
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY); Ouellette, Lois A; Betik, Matthew; HARTWICK Ken -FINANCE
Subject: Re: EXTERNAL - New thinking

Thanks John.

I was thinking that the asset was sold on a daily basis but not necessarily settle on a daily basis.

The reason of the daily sale was to match the energy cost incurred to avoid having an accounting loss.

Instead of daily, the sale could take place on, at least, on a monthly basis to avoid any accounting impact on IESO's monthly income statement. The settlement should be made to meet the cash outflows requirement.

I believe there is a risk for the AG to refuse rate regulated accounting under PSAB. Without the intervention of the OEB, OPG should be able to get a better rating of the bonds.

Sent from my iPhone

On Feb 25, 2017, at 13:05, MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>> wrote:

Michel,
I believe this approach increases the risk of seeing through what this transaction is and having it hit the Provincial deficit immediately. Plus, the transaction would incorrectly be viewed as an OPG only transaction with the GA rebate being on account of OPG.

We've discussed the optics in the past of the IESO not showing the acquisition / set up of an asset through the "speed" with which it is absorbed and picked up by OPG. We've taken it to the extreme of the position that the asset is never on the IESO's books because it settles daily (so it's not a tranche on a quarterly or semi annual basis but basically 365 tranches per year).

What you're suggesting is that OPG recognizes an asset that the IESO so no ability to set up on its own. Doing it daily does not change that fact in my opinion.

My suggestion:
“Desire to be involved” was never a criteria for this plan..... why not compel the OEB to adhere to the legislation and write them in to limit their involvement to ensuring the recovery is as per allowed in the legislation (no ability to alter or really make any decision other than the legislation and subsequent regulation are being followed). Legislation and regulation that directs the OEB to do things is standard practice and is not something that the OEB can determine or dictate.

Thanks
John Mauti

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Friday, February 24, 2017 10:51 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY)
Cc: Ouellette, Lois A; Betik, Matthew
Subject: EXTERNAL – New thinking

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All,

As you know by now, the OEB believes that they should not be involved with the approval process of the regulatory asset.

In the absence of regulatory accounting, PSAB requires that the energy purchased (the unrecognized regulatory asset) be expensed immediately.

If the sale contract would be set-up in a way that the unrecognized asset is sold to the OPG Trust on a daily basis, then an offsetting revenue would be recorded.

As IESO is an agent for the market participants, IESO is showing the market transactions in the income statement on a net basis.

Therefore, no impact on the income statement and the sale would be recorded as a receivable from the OPG Trust.

The accounting treatment in the IESO’s books should not impact the nature of the asset purchased by the OPG Trust, as I believe it would still be considered an intangible asset.

The new accounting approach would:

· not require the approval of the OEB;
· not require IESO to adopt regulatory accounting under PSAB; and
· permit the legislation to be as tight as possible for the right to collect the intangible asset; and
· not require the consolidation of the market books.

I would appreciate your comments on the proposed approach above.

Ps: Is this the magic that Andrew was expecting!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMGaQ&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=x8jOMnpnHgIfMDkvFGR2RUAuvCsT0NVUQ5RRDcCtE9c&s=YLt1jRzoPpDM030sMIwbi2TPyWCqDVUfaZ7rJFQFG7Y&e=>

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Subject: Re: EXTERNAL - New thinking
Date: Saturday, February 25, 2017 19:02:59

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Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMGaQ&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=x8jOMnpnHgIfMDkvFGR2RUAuvCsT0NVUQ5RRDcCtE9c&s=YLt1jRzoPpDM030sMIwbi2TP

yWCqDVUfaZ7rJFQFG7Y&e=>

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Re_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: EY/OPCD Status Updates
Date: Friday, August 04, 2017 07:33:45

I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>, Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>
Subject: EY/OPCD Status Updates

Just checking in to see if there are any updates for this call. If not we can cancel. Cindy

---
Organizer: Veinot, Cindy (TBS)
When: 8:30 AM - 9:00 AM August 4, 2017
Subject: EY/OPCD Status Updates
Location: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

Sent from my BlackBerry 10 smartphone on the Rogers network.

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Re_ FAO Report.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: Re: FAO Report
Date: Thursday, May 25, 2017 11:01:50

Ok. I'll see if she's available to participate anyway. N

From: Kim Marshall
Sent: Thursday, May 25, 2017 10:00 AM
To: Petsche, Nadine (TBS)
Subject: RE: FAO Report

Yes although I told her we were meeting with you and she said she would make sure to touch base with you at the end of the day

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May 25, 2017 10:00 AM
To: Kim Marshall
Subject: RE: FAO Report

Hi Kim.

Not sure if Cindy is available, but is it ok if I forward the invite to her as well? n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 9:58 AM
To: Picard, Michel; Susan Nicholson; Petsche, Nadine (TBS); mbetik@kpmg.ca
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

· Her committee statement, comments – what clarifications/opposing views would add value to her comments

· Her previous regulatory accounting view – why this is ifrs 14 specific???

· What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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Re_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Smith, Elliot [ESmith@osler.com]
CC: Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:54:01
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

Elliot Smith
Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

<image003.gif><http://www.osler.com/>
<image004.jpg>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron <aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Wortsman, Jerald <jwortsman@torys.com<mailto:jwortsman@torys.com>>; Bomhof, Scott <sbomhof@torys.com<mailto:sbomhof@torys.com>>; Estey, Bill <bestey@torys.com<mailto:bestey@torys.com>>; Watson, Gwen <gwatson@torys.com<mailto:gwatson@torys.com>>; James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>; Alan Hibben <alan.hibben@rogers.com<mailto:alan.hibben@rogers.com>>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>; O'Brian, Adam <aobrian@hunton.com<mailto:aobrian@hunton.com>>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; Brad.Purkis@tdsecurities.com<mailto:Brad.Purkis@tdsecurities.com>; Nelms, Scott (MOF)

(Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Smith, Elliot
<ESmith@osler.com<mailto:ESmith@osler.com>>; Sebastiano, Rocco
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>;
Michael.Boll@ieso.ca<mailto:Michael.Boll@ieso.ca>;
GZacher@stikeman.com<mailto:GZacher@stikeman.com>;
aobrian@hunton.com<mailto:aobrian@hunton.com>; Christie, Tim (ENERGY)
<Tim.Christie@ontario.ca<mailto:Tim.Christie@ontario.ca>>; Calwell, Carolyn (ENERGY/MEDEI/MRI)
<Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>>; Johnson, Paul
(ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca<mailto:Paul.Johnson3@ontario.ca>>; Shear, Dan
(ENERGY) <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Rehob, James (ENERGY)
<James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>>; Kwan, Ronald (OFA)
<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; 'Gavin He'
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS)
<Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>; Nelms, Scott (MOF)
<Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>;
kim.marshall@ieso.ca<mailto:kim.marshall@ieso.ca>; 'LEE John -TREASURY'
(john.s.lee@opg.com<mailto:john.s.lee@opg.com>)
<john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; Cox, Hilary (ENERGY)
<Hilary.Cox@ontario.ca<mailto:Hilary.Cox@ontario.ca>>; Hilloowala, Maharukh
<Maharukh.Hilloowala@tdsecurities.com<mailto:Maharukh.Hilloowala@tdsecurities.com>>; Wolff,
Michael <Michael.Wolff@tdsecurities.com<mailto:Michael.Wolff@tdsecurities.com>>; Holloway, Harold
<Harold.Holloway@tdsecurities.com<mailto:Harold.Holloway@tdsecurities.com>>; Akman, Steven
<Steven.Akman@tdsecurities.com<mailto:Steven.Akman@tdsecurities.com>>; Manii, David
<david.manii@tdsecurities.com<mailto:david.manii@tdsecurities.com>>; Nevison, Gary
<Gary.Nevison@tdsecurities.com<mailto:Gary.Nevison@tdsecurities.com>>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

<image001.gif>

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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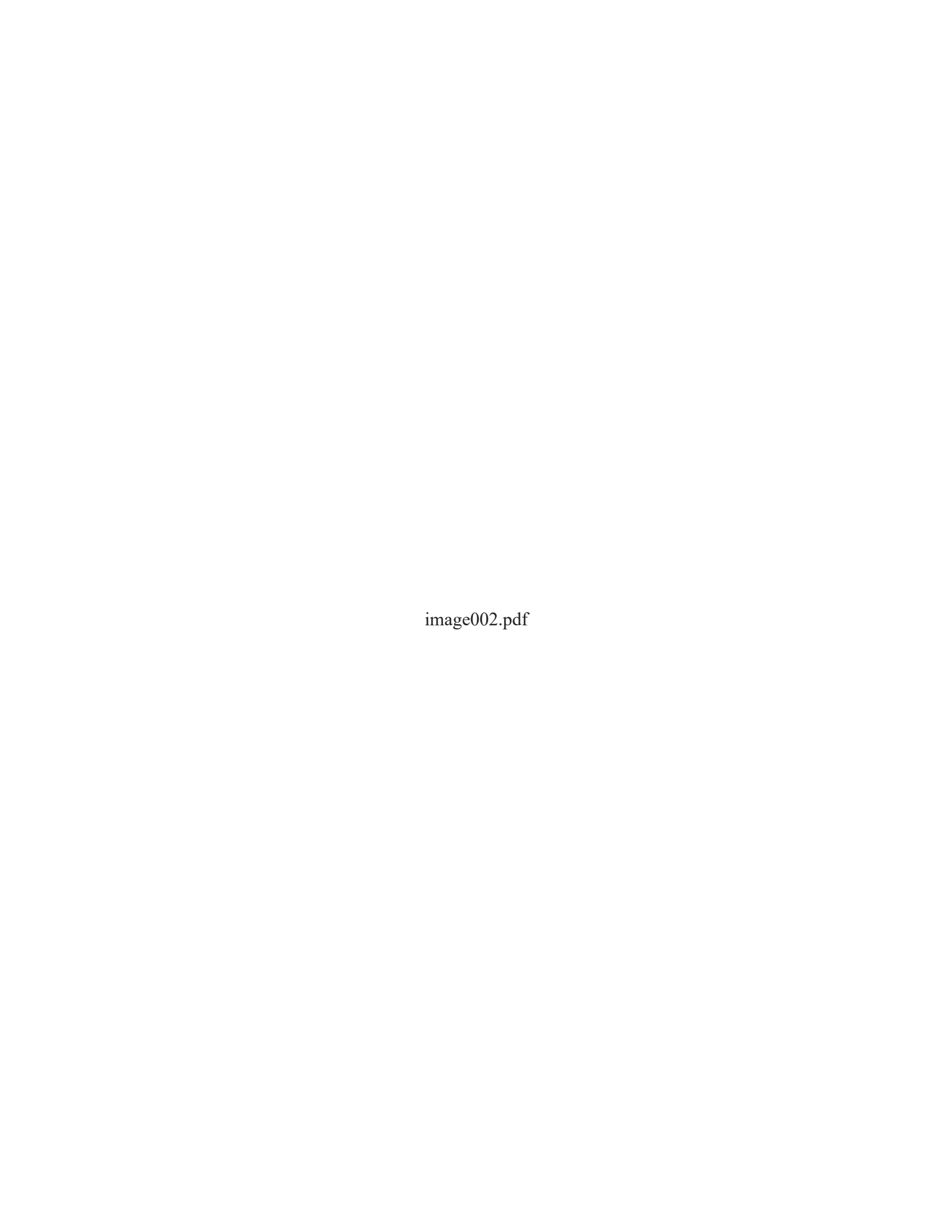
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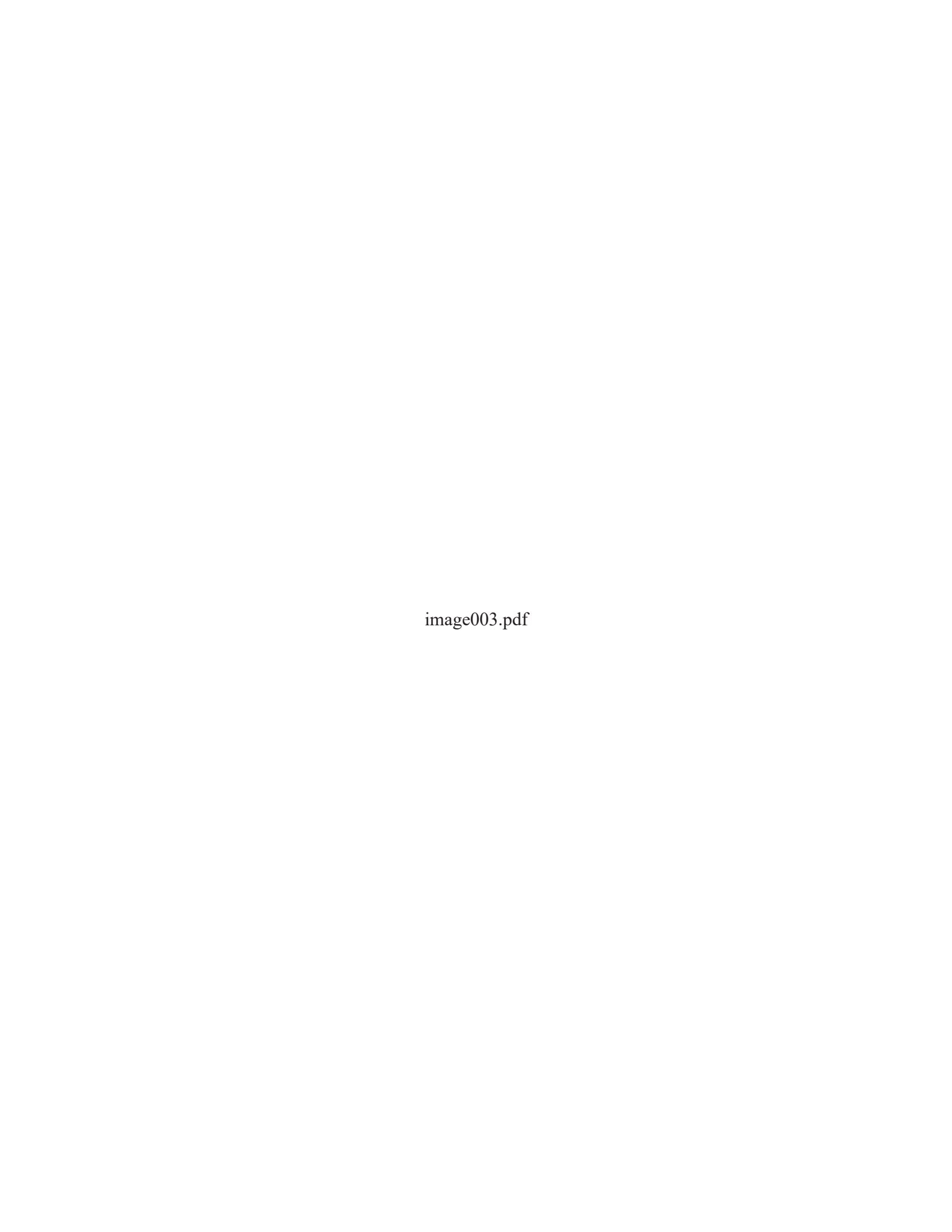
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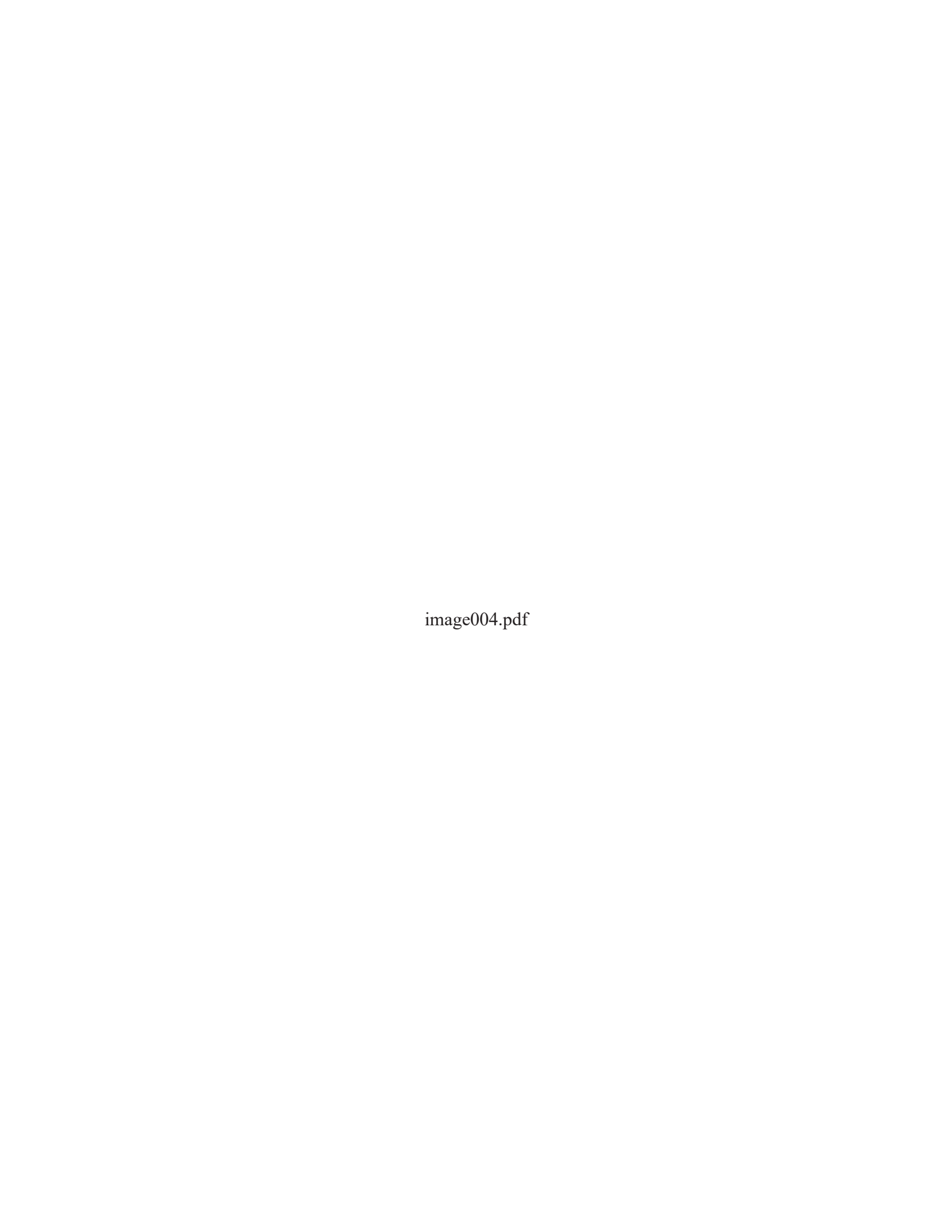
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2017
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DIVERSITY EMPLOYERS

RE_ FYI.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: FYI
Date: Wednesday, May 24, 2017 14:08:19

Yes, just awaiting teleconference details. n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 24, 2017 1:50 PM
To: Petsche, Nadine (TBS)
Subject: Re: FYI

Not to take your time unnecessarily but might help with response

Sent from my iPad

On May 24, 2017, at 1:25 PM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

> Sure. Nadine
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** May 24, 2017 12:58 PM
> **To:** Picard, Michel
> **Cc:** Petsche, Nadine (TBS); Susan Nicholson; Betik, Matthew; Georgia Ritchie-Wust
> **Subject:** Re: FYI
>
> Perhaps Nadine could join our 3pm call thurs afternoon for the first 1omin? by cc to georgia van you pls add Nadine, thx
>
> Sent from my iPad
>
> On May 24, 2017, at 12:55 PM, Picard, Michel <mpicard@kpmg.ca> wrote:
>
> > Hi Nadine,

It would be very useful if you could let us know when the OPCD or other governmental agencies have informed the AG of the transaction and when the details were made available to them.

Regards,

Michel

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Wednesday, May 24, 2017 10:02 AM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Susan Nicholson <susan.nicholson@ieso.ca>; Picard, Michel <mpicard@kpmg.ca>; Betik, Matthew <mbetik@kpmg.ca>
Subject: RE: FYI

Nadine thanks, am copying susan and kpmg, I am not sure what this means but we can talk.

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May 24, 2017 10:00 AM
To: Kim Marshall
Subject: FYI

Kim,

Just wanted to flag these additions to the AG's Audit Planning Report (issued in relation to the Public Accounts audit), as an FYI. Nadine

· Review the working papers of the external auditor of IESO as well as the treatment of significant accounting change related to the Hydro relief initiative

· Review with IESO's external auditors the decision of IESO to adopt US rate regulated accounting which is directly related to the smoothing of the global adjustment (Our Office became aware of this in April 2017 – after the external audit opinion was signed. The audit firm did not make us aware of the significant policy changes in line with our reporting requirements of February 17, 2017). This situation will be reported in Chapter 2 of our 2017 Annual Report.

1.1 Coordination with Agency and Crown Controlled Corporation Auditors

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To:
CC: Georgia Ritchie-Wust [georgia.ritchie-wust@ieso.ca]
Subject: RE: FYI
Date: Wednesday, May 24, 2017 13:50:00

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CC: Susan Nicholson [susan.nicholson@ieso.ca]; Betik, Matthew [mbetik@kpmg.ca]
Subject: RE: FYI
Date: Wednesday, May 24, 2017 13:36:35

Hi Michel.

I think that a review of correspondence between the OPA and the OAG when the decision was made w.r.t. reporting the OPA's RR balances as financial assets and liabilities might be a relevant comparative. That was under a different AG at the time (early 2011) and I'm not sure what the expectation may have been per the component auditor's arrangement with the OAG or when the decision may have been communicated by KPMG at the time. Perhaps Kim might know?

I can't really think of any others, except perhaps OPG's and H1's decisions to adopt US GAAP as the basis of external reporting? As above, I don't have any way of knowing the dates that the external auditors would have apprised the AG of the decision.

Hope this helps.

Nadine

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CC: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: FYI
Date: Wednesday, May 24, 2017 19:39:48

Thanks Georgia. Nadine

From: Georgia Ritchie-Wust [mailto:georgia.ritchie-wust@ieso.ca]
Sent: May-24-17 7:35 PM
To: Petsche, Nadine (TBS)
Cc: Kim Marshall
Subject: RE: FYI

Nadine,

I see that you are also added to the meeting invitation but here are the call in details as requested….just in case you did not get the invite. The meeting/conference call is scheduled for 3pm – 4pm

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO

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"We are what we repeatedly do. ***Excellence****, therefore, is not an act but a* ***habit****".*

…..(Aristotle)

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Cc: Petsche, Nadine (TBS); Susan Nicholson; Betik, Matthew; Georgia Ritchie-Wust
Subject: Re: FYI

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RE_ For your attention.rtf

From: Schwab-Pflug, Emma (ENERGY) []
To: Picard, Michel [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: For your attention
Date: Thursday, March 23, 2017 09:18:18

Thanks Michel, to clarify we can leave the Province's travel meal and hospitality directive an addendum and state:

...the Board of Trustees have general regard to sorts of limitations as are set forth in the “Travel, Meal and Hospitality Expenses Directive of the Province” specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex."

Nadine, I thought you were comfortable with this originally, so it sounds like we're good.

From: Picard, Michel [mpicard@kpmg.ca]
Sent: Thursday, March 23, 2017 9:15 AM
To: Petsche, Nadine (TBS); Schwab-Pflug, Emma (ENERGY)
Subject: RE: For your attention

All my contracts with the Province stipulate the same requirements. I do not think that this is an issue.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:08 AM
To: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: For your attention
Importance: High

KPMG
Would absolutely agree. Copying Michel on this note so he can confirm. N
Original Message
From: Schwab-Pflug, Emma (ENERGY)
Sent: Thursday, March 23, 2017 8:43 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine, we're discussing. I'm asking Musab but would you know if KPMG weighed in on this also? It will help inform decision to accept risks.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)
Sent: Thursday, March 23, 2017 8:34 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: RE: For your attention

Emma,
You likely saw the note regarding the TMH directive. It's an important point that I was sure we had covered in length. Hoping that you/Musab/Usman can confirm ASAP so that Stephen can make the changes. n

-----Original Message-----

From: Schwab-Pflug, Emma (ENERGY)
Sent: March 23, 2017 8:05 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine - fyi, I'm at an all day meeting at the IESO today, will be on email and on call. Could you also keep Usman and Musab informed of new items? Thanks again for all your help.

- Emma

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)
Sent: Thursday, March 23, 2017 8:02 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: Fw: For your attention

Hi Emma. Just to keep you in the loop. N

Original Message
From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Thursday, March 23, 2017 6:25 AM
To: ASHBOURNE, STEPHEN
Cc: PRESTAGE, JA
Subject: Re: For your attention

Hi Stephen. I understand, but the reference noted still suggests that compliance with the directive itself (in full form) would be required. It should just be modified to refer to reference the principles as opposed to 'limitations in the directive' which is very different. N

Original Message
From: ASHBOURNE, STEPHEN
Sent: Thursday, March 23, 2017 6:04 AM
To: Petsche, Nadine (TBS)
Cc: PRESTAGE, JA
Subject: Re: For your attention

I think we're no longer contemplating attaching the full Policy. We dropped in your few summary points describing the "principles" in a generic way - did you see that?

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Mar 22, 2017, at 8:46 PM, Petsche, Nadine (TBS)
<Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>> wrote:

Stephen,
I’m just updating my control analysis based on the latest version of the Declaration and the TPA. I came across the following extract which also needs to be revised to reflect reference to ‘principles’ of the directive only. Sorry for the late notice. Just saw it now. n

Declaration

Power to Pay Trustee's Fees. The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

_____

[cid:imagea0b2fc.GIF@b9e8d051.4397a308]

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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RE_ Good evening.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
Subject: RE: Good evening
Date: Monday, February 27, 2017 08:55:23

---

http://laws-lois.justice.gc.ca/eng/acts/C-29.7/page-6.html#docCont

-----Original Message-----
From: Picard, Michel
Sent: Monday, February 27, 2017 5:17 AM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Kim Marshall' <Kim.Marshall@ieso.ca>; Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>; MAUTI John -FIN & C CTRL <john.mauti@opg.com>; 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com>
Subject: FW: Good evening

fyi

-----Original Message-----
From: Struthers, Sandy [mailto:strutha@navcanada.ca]
Sent: Sunday, February 26, 2017 11:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: Good evening

Michel

NAV CANADA is completely separate from the Government of Canada and is sometimes described as a quasi crown even though it is not. In 1996 it purchased the Canadian air navigation assets from Transport Canada. It has no shares and no shareholder. The interest groups are represented on its Board but have no equity rights and no one party can control the Board. The Board also has a number of in dependent directors with no interest group affiliation. The public debt is secured only by the assets of the company and their is no third party guarantee. Pursuant to the Air Navigation Services act the company has the right to set and charge rates related to the services it provides subject to the concept in the act that is a not for profit entity

Hope that helps. Let me know if you need anything else

Best regards

Sandy

Sent from my BlackBerry 10 smartphone on the Bell network.
From: Picard, Michel
Sent: Sunday, February 26, 2017 8:44 PM
To: Struthers, Sandy
Subject: Good evening

Hi Sandy,

Hope this finds you well.

I have a couple of quick questions for you related to NAV Canada.

Is NAV considered an OGO or a GBE? Is NAV consolidated by the GVT of Canada?

Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://www.linkedin.com/in/michel-picard-8b3b942b?authType=NAME_SEARCH&authToken=oVKr&locale=en_US&trk=tyah&trkInfo=clickedVertical%3Amynetwork%2CclickedEntityId%3A107441415%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1-1%2CtarId%3A1478640064654%2Ctas%3Amichel%20pi>

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RE_ Good evening.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Good evening
Date: Monday, February 27, 2017 08:25:37

Thanks Michel.
Sounds similar in operations to Teranet, but Teranet was not established by the gov't.
N

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 27, 2017 5:17 AM
To: Veinot, Cindy (TBS); Kim Marshall; Petsche, Nadine (TBS); MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL
Subject: FW: Good evening

fyi

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Subject: Re: Good evening

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Best regards

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Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://www.linkedin.com/in/michel-picard-8b3b942b?authType=NAME_SEARCH&authToken=oVKr&locale=en_US&trk=tyah&trkInfo=clickedVertical%3Amynetwork%2CclickedEntityId%3A107441415%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1-1%2CtarId%3A1478640064654%2Ctas%3Amichel%20pi>

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RE_ Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; 'LeeAnne.Probert@ca.ey.com' [LeeAnne.Probert@ca.ey.com]; 'Suzie Gignac (suzie.r.gignac@ca.ey.com)' [suzie.r.gignac@ca.ey.com]; 'Blake Langill (blake.w.langill@ca.ey.com)' [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
Subject: RE: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 21:37:36

Sorry everyone. To accommodate availability issues, I am going to propose a new meeting time (tomorrow at 1 pm). Having the meeting in advance of Friday morning would be ideal, if it can be done. I will send out another meeting request for tomorrow at 1 pm , so that there is a hold on your calendars. Thanks again and sorry for the confusion.
Nadine

From: Petsche, Nadine (TBS)
Sent: June-14-17 4:35 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: RE: Grassy Narrows (Accounting for 2016/17 Public Accounts)

All,
Hoping you can accommodate a change in time to 8:30. Unfortunately I have another senior level meeting starting at 9:30, so an earlier start would be necessary.
Shyrose will send out a new invite with the earlier time. Thanks for your flexibility. Nadine

-----Original Appointment-----
From: Virani, Shyrose (TBS)
Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

RE_ Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
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Subject: RE: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 16:35:17

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Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

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<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

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From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; 'LeeAnne.Probert@ca.ey.com' [LeeAnne.Probert@ca.ey.com]; 'Suzie Gignac (suzie.r.gignac@ca.ey.com)' [suzie.r.gignac@ca.ey.com]; 'Blake Langill (blake.w.langill@ca.ey.com)' [blake.w.langill@ca.ey.com]
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From: Virani, Shyrose (TBS)
Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

RE_ Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
Subject: RE: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 16:35:17

All,
Hoping you can accommodate a change in time to 8:30. Unfortunately I have another senior level meeting starting at 9:30, so an earlier start would be necessary.
Shyrose will send out a new invite with the earlier time. Thanks for your flexibility. Nadine

-----Original Appointment-----
From: Virani, Shyrose (TBS)
Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

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<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

RE_ H1 control assessement.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: H1 control assessement
Date: Wednesday, July 05, 2017 22:00:09

Hi Michel.

Just following up on this item. Perhaps we can chat about timing.

Nadine

From: Petsche, Nadine (TBS)
Sent: June-30-17 5:18 PM
To: Picard, Michel (mpicard@kpmg.ca)
Subject: H1 control assessement

Hi Michel.

Further to our discussion this morning, I would also like to speak with you regarding an assessment of provincial control over Hydro One following the recent share disposition.

I'll look forward to hearing back from you regarding the AFT item, an next steps w.r.t. the control analysis.

Thanks and have a great weekend.

Nadine

RE_ Hydro One assessment.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Church, Bailey J [bchurch@kpmg.ca]
Subject: RE: Hydro One assessment
Date: Monday, July 10, 2017 14:49:53

Since Bailey will be joining, we should use the following calling number:

416 204 1494
9866235

-----Original Appointment-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 10, 2017 10:09 AM
To: Virani, Shyrose (TBS); Picard, Michel; Petsche, Nadine (TBS)
Subject: Hydro One assessment
When: Monday, July 10, 2017 3:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Michel to call Nadine at 416 325 8027

From: Petsche, Nadine (TBS)
Sent: July 10, 2017 9:53 AM
To: Virani, Shyrose (TBS)
Subject: Fw: Hydro One assessment

From: Picard, Michel <mpicard@kpmg.ca>
Sent: Monday, July 10, 2017 9:39 AM
To: Petsche, Nadine (TBS)
Cc: Church, Bailey J
Subject: Hydro One assessment

Hi Nadine, Are you available today after 2pm for a call?

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
LinkedIn

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RE_ IESO Accounting for Conservation Costs - Final.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Shannon O'Mahony [shannon.omahony@ca.ey.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Nadira Singh [nadira.singh@ca.ey.com]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]
Subject: RE: IESO – Accounting for Conservation Costs - Final
Date: Monday, February 13, 2017 16:22:34
Attachment 1: image001.gif

Suzie and I only have a couple of points we want to clarify.

Nadine, unless you object, I can have a quick discussion with Shannon and then give you a call to update.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Shannon O'Mahony
Sent: Monday, February 13, 2017 3:21 PM
To: Petsche, Nadine (TBS)
Cc: Nadira Singh; Kim Marshall; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Jack, Shannon (TBS); Lee Anne Probert
Subject: RE: IESO – Accounting for Conservation Costs - Final

Happy to have a call anytime this afternoon. Nadira and I can also reach out to Lee Anne and Suzie to speak with them directly if you think that will be helpful.

Regards,

S.

--

Shannon O'Mahony | Partner | Financial Accounting Advisory Services

Ernst & Young LLP

222 Bay Street, P.O. Box 251, Toronto, Ontario M5K 1J7, Canada

Office: 416-943-2094 | Cell: 416-884-3422 | shannon.omahony@ca.ey.com

Assistant: Amanda Craig | Phone: 416-943-4581 | amanda.craig@ca.ey.com

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.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, February 13, 2017 1:00 PM
To: Shannon O'Mahony <shannon.omahony@ca.ey.com>
Cc: Nadira Singh <nadira.singh@ca.ey.com>; Kim Marshall <Kim.Marshall@ieso.ca>;

Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Jack, Shannon (TBS) <Shannon.Jack@ontario.ca>
Subject: RE: IESO – Accounting for Conservation Costs - Final

Hi Shannon.

I'm not sure that Cindy will be available to join, but I know that Suzie Gignac and Lee Anne Probert were hoping to speak with you further about your memo.

If we can have a call this afternoon, that would be great. If you are able to confirm Suzie's and/or Lee Anne's availability for the proposed time, that would be much appreciated.

Regards,

Nadine

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 13, 2017 12:29 PM
To: Shannon O'Mahony
Cc: Nadira Singh; Petsche, Nadine (TBS)
Subject: RE: IESO – Accounting for Conservation Costs - Final

Shannon, thanks for your email. I am copying Nadine from the provincial controller office.

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Shannon O'Mahony [mailto:shannon.omahony@ca.ey.com]
Sent: February 13, 2017 10:38 AM
To: Kim Marshall
Cc: Terry Young; Nadira Singh
Subject: RE: IESO – Accounting for Conservation Costs - Final

Dear Kim:

Happy to try to help or provide clarity on the Report. It would be interesting to understand the Province point of view in advance of a meeting. Obviously it goes without saying, that the Controller's Office would need to form their own accounting policy and their auditor would weigh in due course as part of their audit procedures and detailed understanding of the contracts.

I have copied Nadira Singh a senior manager on my team that has been involved with the Report

Regards,

S.

--

Shannon O'Mahony | Partner | Financial Accounting Advisory Services

Ernst & Young LLP

222 Bay Street, P.O. Box 251, Toronto, Ontario M5K 1J7, Canada

Office: 416-943-2094 | Cell: 416-884-3422 | shannon.omahony@ca.ey.com

Assistant: Amanda Craig | Phone: 416-943-4581 | amanda.craig@ca.ey.com

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From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Saturday, February 11, 2017 8:08 AM
To: Shannon O'Mahony <shannon.omahony@ca.ey.com>
Cc: Terry Young <terry.young@ieso.ca>
Subject: Fw: IESO – Accounting for Conservation Costs - Final

Shannon, apologies for reaching out directly, as they plan how this is going to work, the provincial controller and their e&y auditors would like to have a conference call with you and I re the amortization memo. If you are ok with this I will copy you into an email trail and we can set up. They are hoping for mon afternoon, thanks

Terry fyi

From: Terry Young
Sent: January 20, 2017 1:37 PM
To: Kim Marshall
Subject: Fw: IESO – Accounting for Conservation Costs - Final

I need to chat with you about this. I am just boarding a plane but can we arrange to talk around 4?

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Phil Bosco <Phil.Bosco@ieso.ca>

Sent: Thursday, January 19, 2017 10:15 PM

To: Kaili Sermat-Harding

Cc: Terry Young; Katherine Sparkes; Nik Schruder

Subject: Fw: IESO – Accounting for Conservation Costs - Final

Kaili,

Attached pleased find the report from Ernst and Young regarding the amortization of conservation costs. If you would like to discuss the contents after your review please let us know.

I appreciate your patience as we finalized this document.

Regards,

Phil

Phil Bosco
Manager, Technical Services
Conservation & Corporate Relations
IESO

From: Shannon O'Mahony <shannon.omahony@ca.ey.com>

Sent: Thursday, January 19, 2017 9:53 PM

To: Phil Bosco

Cc: Nadira Singh

Subject: IESO – Accounting for Conservation Costs - Final

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Dear Phil:

Please find attached the final report.

Regards,

S.

--

Shannon O'Mahony | Partner | Financial Accounting Advisory Services

Ernst & Young LLP

222 Bay Street, P.O. Box 251, Toronto, Ontario M5K 1J7, Canada

Office: 416-943-2094 | Cell: 416-884-3422 | shannon.omahony@ca.ey.com

Assistant: Amanda Craig | Phone: 416-943-4581 | amanda.craig@ca.ey.com

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image001.pdf

RE_ IESO 2014-15 restated balance sheet.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Li, Wendy (TBS) [Wendy.Li@ontario.ca]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO 2014-15 restated balance sheet
Date: Friday, May 05, 2017 13:11:14

Hi Wendy – restated for what? Merger?

From: Li, Wendy (TBS) [mailto:Wendy.Li@ontario.ca]
Sent: May 05, 2017 1:04 PM
To: Susan Nicholson
Cc: Patel, Bharat (TBS); Kim Marshall
Subject: IESO 2014-15 restated balance sheet

Hi Susan,

Can you please send me the restated 2014-15 balance sheet? We'll need the information for cash flow purpose.

Thank you,

Wendy

Wendy Li

Senior Policy Analyst

External Reporting

Accounting Policy and Financial Reporting Branch

Office of Provincial Controller

416.325.5480

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From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Li, Wendy (TBS) [Wendy.Li@ontario.ca]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO 2014-15 restated balance sheet
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Sent: May 05, 2017 1:04 PM
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Wendy

Wendy Li

Senior Policy Analyst

External Reporting

Accounting Policy and Financial Reporting Branch

Office of Provincial Controller

416.325.5480

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RE_ IESO GBE analysis Febr 5 (draft #1) EY 13-Feb-2017.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: IESO GBE analysis Febr 5 (draft #1) EY 13-Feb-2017
Date: Wednesday, February 15, 2017 15:46:05
Attachment 1: IESO GBE analysis Febr 5 (draft #1) EY 13-Feb-2017michel.docx

---

My comments are embedded.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, February 15, 2017 2:12 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: IESO GBE analysis Febr 5 (draft #1) EY 13-Feb-2017

Michel,

As discussed, E&Y was asked to review and comment on the GBE assessment. The feedback is attached for your info.

N

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IESO GBE analysis Febr 5 (draft #1) EY 13-Feb-2017michel.pdf

IESO (draft #1)

Government Business Enterprise ("GBE") analysis

References: IESO's 2015 Financial statements, PS 1300, Electricity Act, 1998 ("EA")

A GBE is defined in the CPA Accounting Handbook, Public Sector Accounting, Introduction to public sector accounting standards paragraph 6.

A GBE is a government organization that has all of the following characteristics:

Characteristics	Guidance and comments	Weighting	Recommendations
(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.	• IESO is a not-for-profit organization, non-taxable, corporation established pursuant to Part II of the *Electricity Act*, 1998. (note 1 to FS) • The IESO is not an agent of the Crown for any purpose, despite the Crown Agency Act. 2014. (EA, 8) • The IESO has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects (EA, 6(3)). • The IESO is subject to various claims, legal actions and investigations that arise in the normal course of business. (note 15 to FS)	• Characteristic is met.	
(b) It has been delegated the financial and operational authority to carry on a business?	• A business is an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs or other economic benefits directly to investors or other owners, members or participants. (IFRS 3, Appendix A))	• Characteristic is met. • IESO's board of directors has been delegated the financial and operational authority to carry on the business. IESO is managing its business to provide other economic benefits to market participants. • The key benefits include: – to direct the operation and maintain the reliability of the IESO-controlled grid; and	• Changing the type of organization from not-for-profit organization to be a for-profit organization would strengthen the argument that IESO is carrying business.

Commented [SG4]: Is this feasible? Would the generators and distributors be ok with this? Wouldn't the profit have to come from the rate payer in the end? And wouldn't it be the rate payers who would be entitled to the profit?

Commented [m5]: My view is that we do not need this to be a GBE.

Commented [NP1]: Doesn't have to be for profit.

	• For example, a GBE may be required to earn a profit while operating within a specified pricing structure. (PS 6420) • The IESO is not an agent of the Crown for any purpose, despite the Crown Agency Act. 2014. (EA, 8) • The business and affairs of the IESO shall be carried on without the purpose of gain and any profits shall be used by the IESO for the purpose of carrying out its objects. (EA, 6(2)) • The IESO's board of directors shall manage and supervise the management of the IESO's business and affairs. (EA, 10(1)) • The board of directors of the IESO may make by-laws regulating the business and affairs of the IESO. (EA, 22(1)) • At least 120 days before the beginning of each fiscal year, the IESO shall submit its proposed business plan for the fiscal year to the Minister for approval. (EA, 24(1)) • The IESO may establish and charge fees to recover, (a) the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets; (b) the costs of doing anything the IESO is required or permitted to do under this or any other Act; and	– to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term. • The OEB has allowed the IESO to retain $10 million of profits in surplus, which is shown as a regulatory deferral account balance in the accumulated surplus (deficit) of the statement of Financial Position.	

	(c) any other type of expenditure the recovery of which is permitted by the regulations (EA, 25(1)) • The Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations. (EA, 25(4))		
(c) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity.	• Selling goods and services involves a direct exchange relationship between the revenues and the goods and services provided. Selling prices are related to the quantity and quality of goods or services sold, and not just to the recovery of administrative costs. Imposed fees and penalties, such as licenses and fines, do not represent sales of goods and services. Insurance premiums charged by a government organization are a sale of a service and not an imposed fee. (PS 1300.29). IESO is permitted to recover the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets (see above EA, 25(1)). • The objects of IESO include: (a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence; (b) to enter into agreements with transmitters to give it authority to	• Characteristic is met. • IESO does not sell goods but provide various services and ancillary services to market participants for the ultimate benefits of the customers of Ontario. • Principal activity is providing services outside of the government reporting entity. • IESO has two OEB approved fees: one for exports and one for withdrawals for use in Ontario and embedded generation, which is generation within an LDCs service territory. All parties charged are market participants registered with the IESO and are charged based on meter readings. • The fees charged to exporters are approximately 20% higher than the other market participants. • The fees charged for the services are determined based on meter readings and a rate per KWh, similar to LDCs and transmission companies in Ontario.	

Commented [SG2]: This suggests it is only a cost recovery structure at the moment (no profit).

Commented [m3]: Agree with her comment. But how is this relevant - what is the issue?

	direct the operation of their transmission systems; (c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act; (d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system; (e) to establish and enforce criteria and standards relating to the reliability of the integrated power system; (f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities; (g) to operate the IESO-administered markets to promote the purposes of this Act; (h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources; (i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*; (j) to engage in activities in support of the goal of ensuring adequate, reliable		

	and secure electricity supply and resources in Ontario; (k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term; (l) to conduct independent planning for electricity generation, demand management, conservation and transmission; (m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources; (n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources; (o) to engage in activities that facilitate load management; (p) to engage in activities that promote electricity conservation and the efficient use of electricity; (q) to assist the Board by facilitating stability in rates for certain types of consumers; (r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy		

	and reliability of the integrated power system to meet those needs; and (s) to engage in such other objects as may be prescribed by the regulations. (EA, 6) **Part I of the EA, Interpretation:** • "Ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services. • "Fees" means, with respect to the IESO, amounts charged by the IESO to recover its costs of operations. • "IESO-controlled grid" means the transmission systems with respect to which, pursuant to agreements, the IESO has authority to direct operations. • "Integrated power system" means the IESO-controlled grid and the structures, equipment and other things that connect the IESO-controlled grid with transmission systems and distribution systems in Ontario and transmission systems outside Ontario. • **Regulations** 161.4 (1) The Lieutenant Governor in Council may make regulations, (d) requiring the IESO, OPA and the Board to enter into contracts relating to the provision of services and such other matters as the Lieutenant		

	Governor in Council considers necessary or advisable, (i) to assist the Board and the Market Surveillance Panel with respect to market surveillance of the IESO-administered markets, (ii) to assist the OPA with respect to the forecasting of electricity demand and the adequacy and reliability of electricity resources for the medium and long term **Conservation measures** • Subject to section 71 of the *Ontario Energy Board Act, 1998* and such limits and criteria as may be prescribed by the regulations, a transmitter, distributor or the IESO may provide services that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to, (a) the promotion of electricity conservation and the efficient use of electricity; (b) electricity load management; or (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.		
(d) It can, in the normal course of its operations, maintain its operations and	• IESO is a not-for-profit organization, non-taxable, corporation established pursuant to Part II of the *Electricity Act*, 1998.	• Characteristic is met. • IESO does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities	

meet its liabilities from revenues received from sources outside of the government reporting entity.	• IESO does not receive transfer from the Province. All its costs are to be recovered from the market participants.	without relying on the Province of Ontario.	

A GBE should, in the normal course of its operations, be able to maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity. These revenues include not only amounts from the sale of goods and services, but also transfers received from other governments or sources outside of the government reporting entity. (PS 1300.30)

When determining if an organization can maintain its operations and meet its liabilities with revenues received from outside of the government reporting entity, the following factors should be considered:

(a) the organization's history of maintaining its operations and meeting its liabilities;

(b) whether the organization would continue to maintain its operations and meet its liabilities without relying on sales to, or subsidies in cash or kind from, the government reporting entity;

(c) past, present and future economic conditions within which the organization operates; and

(d) whether the organization has realistic and specific plans that show how it expects to be able to maintain its operations and meet its liabilities in the future. (PS 1300.31)

IESO does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities without relying on the Province of Ontario. As per the EA, IESO is permitted to recover the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets. As a result, the fees charged to the market participants cover all the costs incurred by IESO.

Although the IESO has a note payable to the OEFC of $90 million, loans are not considered transfers from a government provided it has the ability to repay the loans received.

Other considerations

The majority of the market participants reports either under IFRS (or US GAAP for OPG and Hydro One). The use of IFRS by IESO would facilitate the comparison with the market participants. It should be noted that the Alberta Electric System Operator ("AESO") a\has adopted IFRS as its accounting framework.

Many of the WSIB organizations across Canada are considered GBE and, as a result, report under IFRS.

Although IESO has received rate orders to recover in its future rates certain costs charged to either the statement of operations or accumulated deficit (e.g. smart metering expenses charge to statement of operations and, actuarial losses and other PSAB transition item charged to accumulated deficit), these costs have not been recognized as regulatory assets as it is unclear whether PSAB permits the recognition of the

Commented [SG7]: Based on discussion, if debt is in IESO, would it still be considered to be sustainable?

Michel – Have they considered the regulatory assets? Or the sale of the assets to OPG?

Commented [SG6]: This would push me to a GNPO status then but I believe that in the "basis of reporting" memo it states that IESO has no counterparties outside the government so leads to OGO being the right classification but there is some judgement involved.

Michel – what does that mean no counterparties outside – All the LDCs are the counterparties and ultimately, the ratepayers.

I do not believe it meets the definition of an GNPO.

"GNPO are entities, normally without transferable ownership interests, organized and operated exclusively for social, educational, professional, religious, health, charitable or any other not-for-profit purpose. A not-for-profit organization's members, contributors and other resource providers do not, in such capacity, receive any financial return directly from the organization."

There is no contributors or contributions received by IESO. IESO provides a service to the generators/transmitters/distributors against a fees that is determined by the OEB to recover all its costs.

economic impacts of rate regulation. As IESO is an entity regulated by the OEB, the use of IFRS by IESO would permit to recognize the economic impacts of rate regulation approved by the OEB.

Conclusion: IESO

PS 1300, DEFINITIONS

.04 A **government component** is an integral part of government, such as a department, ministry or fund. It is not a separate entity with the power to contract in its own name and that can sue and be sued.

.05 A **government organization** is any organization controlled by a government that is a separate entity with the power to contract in its own name and that can sue and be sued.

.06 A **government business enterprise** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It has been delegated the financial and operational authority to carry on a business**.**

(c) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity.

(d) It can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.

.07 A **government not-for-profit organization** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It has counterparts outside the public sector as defined in paragraph .02.

(c) It is an entity normally without transferable ownership interests.

(d) It is an entity organized and operated exclusively for social, educational, professional, religious, health, charitable or any other not-for-profit purpose.

(e) Its members, contributors and other resource providers do not, in such capacity, receive any financial return directly from the organization.

.08 An **other government organization** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It is neither a government business enterprise nor a government not-for-profit organization.

.09 A **government partnership** is not a government organization but is a contractual arrangement between the government or a government organization and a party or parties outside of the reporting entity that has all of the following characteristics:

(a) The partners co-operate toward achieving significant, clearly defined common goals.

(b) The partners make a financial investment in the government partnership.

(c) The partners share control of decisions related to the financial and operating policies of the government partnership on an ongoing basis.

(d) The partners share, on an equitable basis, the significant risks and benefits associated with the operations of the government partnership.

25A A **governmental unit** is a government component, government not-for-profit organization or other government organization.

Conclusion: Based on the above definitions, IESO is neither a government component, nor a government not-for-profit organization nor a government partnership. If it is determined that IESO is not a GBE then it would therefore be classified as an OGO.

- For purposes of preparing general purpose financial statements, **GBEs** apply the standards for **publicly accountable enterprises** in Part I of the CPA Canada Handbook – Accounting (i.e. IFRS). (Introduction to public sector accounting standards, paragraph 17)
- For purposes of preparing general purpose financial statements, **OGOs** would normally apply the standards for governments in the PSA Handbook. When these standards do not meet their financial statement users' needs, the standards applicable to publicly accountable enterprises in Part I of the CPA Canada Handbook – Accounting should be considered. The standards determined to be most appropriate should be disclosed and consistently applied. (Introduction to public sector accounting standards, paragraph 19)

PS 1000, GOVERNMENT OPERATIONS

.06 Governments are inherently different from businesses. The unique characteristics of government have reporting implications as outlined in Appendix A.

.07 The objectives of financial reporting for governments and business are not the same. Specifically, the accounting standards for business do not adequately prescribe the recognition, measurement, presentation and disclosure of government financial information that is needed for accountability by governments and useful for decision making by the users of government financial statements.

.08 The goals of government are not the same as those of business. The primary goal of a business is profit and its resources are employed to that end. Investors put up capital in expectation of a return, and financial statements report the success or failure of the business in providing that return. Results of operations are measured and reported in terms of profit or loss and it is added to or deducted from the owners' investment to measure financial position. Annual and accumulated earnings or losses are key measures of the performance of a business.

.09 Governments differ from business in both their objectives and financing. In general, governments provide public services and redistribute wealth for a variety of social and economic purposes. The delivery of a service does not, however, normally give rise to revenue, and the payment of taxes does not necessarily entitle a taxpayer to any particular public service or benefit. Because governments are granted the power to tax, their revenues are not substantially dependent upon voluntary contributions nor on the profitable sale of goods and services in the marketplace. Thus, except for commercial-type activities, the relationship between revenues and costs in any given period is not the same for government as it is for business.

.10 In any given period, a government may finance its operations from tax and other revenues or by borrowing or incurring other liabilities. The financial resources required are forecast and the government's financing plan is set out in the budget. Financial statements report the actual results of government operations and the extent to which revenues raised in the period were or were not sufficient to meet the expenses of that period. Users of the statements look to the operating surplus or deficit for the period, both on its own and in relation to the government's plan, in evaluating the government's fiscal management. Expenses, however, do not necessarily represent the total financial resources required. Governments, for example, also spend, lend and invest in addition to consuming economic resources in each accounting period. It is, therefore, also important to provide information about how a government financed its activities and met its cash requirements.

.11 Over the years, a government accumulates liabilities that must be settled and assets that provide resources for future operations. Information that reports the extent of the financial obligations that will have to be settled, or the extent of the assets that are available for future operations, is useful because it bears directly on future revenue requirements and on a government's ability to settle its obligations and finance its operations.

.12 The information needed to promote accountability and to aid understanding and assessments of government operations extends beyond reporting surpluses or deficits. For example, financial statements should provide information that describes the nature and purpose of government spending and the sources of its revenues and financing. They should also provide information that describes a government's non-financial resources that can be used in future operations and the cost of using those resources in service delivery. They should also provide information on investments and on potential obligations that may result from guarantees or indemnities.

RE_ IESO Market Accounts.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: IESO Market Accounts
Date: Friday, August 25, 2017 16:24:29
Attachment 1: Item 7(iv)Market Account Definitions.docx

Here is a listing of the market accounts which we developed for our Audit Committee which you may find helpful.

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5
T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy
"Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals"

-----Original Appointment-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: August 25, 2017 11:21 AM
To: Veinot, Cindy (TBS); Donaldson, Mark (TBS); Patel, Bharat (TBS); Kim Marshall; Susan Nicholson
Subject: IESO Market Accounts
When: August 25, 2017 4:30 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

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Item 7(iv)Market Account Definitions.pdf

Appendix – Definition of Market Assets and Liabilities

1) Cash, restricted for market activities
   These accounts include incoming and outgoing cash for all market-related activities. Separate cash accounts are maintained for specific Market programs such as: Transmission Rights, Ontario Electricity Support Program, Rural or Remote Rate Protection, Regulated Price Plan and Enforcement, Adjustment, Prepayments, Prudential Cash Deposits and Cash from Demand Response auctions.

2) Market Accounts Receivable
   This account is comprised of billed and accrued receivables to be received from Market Participants.

3) Net Congestion Rent Receivable/Payable
   Market Participants bid in a Transmission Right (TR) auction to win rights over specific transmission lines over a specific period of time (typically 1 month or more). During this time they have temporary rights to collect payments should there be any congestion. This account holds the balance of the congestion rents either import or export congestion that is not paid to TR holders but calculated through settlements.

4) Global Adjustment Other Charges Receivable/Payable
   This account includes costs incurred for the Conservation program, Funds program, Liquidated Damages and Greenfield. These charges are processed through the corporate accounts payable and then recovered through Global Adjustment each month.

5) Interest Receivable
   Interest is earned and accrued on cash and short-term investments on a monthly basis. This account contains the interest that has been accrued until it is received from the banks/securities in the following month.

6) Regulated Price Plan Variance (to become Unrecovered Global Adjustment Expenses)
   Prices for the Regulated Price Plan (RPP) consumers are set every six months by the OEB based on a forecast of the cost of power over the next year. The IESO tracks the variance between the forecast and the actual cost of power in this account. Effective July 1st the rate set by the OEB will be reduced as part of the Ontario Fair Hydro Plan and the resulting regulated asset will be transferred to the financing entity.

7) Revolving Line of Credit
   The IESO has a $975 million Ontario Financing Authority (OFA) credit facility, which is used to fund market liquidity and programs for the Ontario Fair Hydro Plan at a variable interest rate of the Province of Ontario's cost of borrowing for a 30 day term plus 0.25% per annum.

8) HST Receivable/Payable
   This account represents the monthly HST that is either receivable or payable to the CRA.

9) Market Accounts Payable
   This account is comprised of billed and accrued payables to be paid to Market Participants.

10) Prepayments
Market Participants trading in the Financial and Physical markets maintain a deposit or margin call with the IESO. These deposits are used and replenished as the Market Participants are invoiced each month and when they reach their minimum deposit threshold.

11) Market Interest Payable to IESO Corporate
Interest earned on the Market Investment accounts accumulates and is transferred to the corporate ledger at the end of each year.

12) Market Penalties Payable to IESO Corporate
Penalties imposed on Market Participants as a result of late payments are transferred to the corporate ledger at the end of each year.

13) Provision for Future Transmission Rights Activity
In its operation of the Transmission Rights market, on a periodic basis, the IESO will conduct an auction of Transmission Rights. Successful bidders will obtain Transmission Rights for a period of time that will entitle the holder to receive a payment from the IESO equal to the difference between the hourly Ontario energy price and a neighboring jurisdiction (e.g., Ontario/ New York, Ontario/ Quebec, etc.).

14) Provision for Future Ontario Electricity Support Program Activity
The OESP portion of the Ontario Fair Hydro Plan became effective on May 1, 2017. Although the program will eventually be funded by the provincial revenues, the initial funding from the IESO will come from the balance in this variance account which was collected between January 1, 2016 to May 1, 2017.

15) Provision for Future Rural or Remote Rate Protection Activity
The Rural or Remote Rate Protection (RRRP) is a surcharge on all electricity purchasers in Ontario. It is used to fund the Rural and Remote Settlement Credit, which is paid to distributors in rural and remote areas to subsidize their purchases of electricity. This account maintains the variance between what was received and what was paid out under the RRRP program. A portion of the program was moved to the provincial revenues effective July 1, 2017 as part of the Ontario Fair Hydro Plan.

16) Provision for Future Enforcement Activity
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17) Deferred Transmission Rights Revenue
Revenue received as a result of long term Transmission Rights auctions is amortized over 12 months. This account maintains the deferral of all revenue received from these auctions until they reach maturity.

RE_ IESO Market Accounts.rtf

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From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
CC: Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO Market Accounts
Date: Friday, October 06, 2017 14:46:08
Attachment 1: image001.jpg
Attachment 2: image002.jpg

The RPP variance account would make up a large part of the difference ($181,927). Without looking into the details, the balance is probably in the cash account as the OPA did not separate their corporate cash and the cash from market settlements.

I hope this helps.

Regards, Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

"Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals"

From: Patel, Bharat (TBS) [mailto:Bharat.Patel3@ontario.ca]
Sent: October 06, 2017 2:41 PM
To: Susan Nicholson
Subject: RE: IESO Market Accounts

In 2014 OPA annual report (see below) OPA reported Market contract receivables $538.7M and market contract liabilities $398.8M; whereas IESO report market assets and market liabilities $1.6B (both market assets and liabilities match).

My question is why OPA reported different amounts for market contract receivables and payables? Any thoughts?

From: Susan Nicholson [mailto:susan.nicholson@ieso.ca]
Sent: August-25-17 4:24 PM
To: Veinot, Cindy (TBS); Donaldson, Mark (TBS); Patel, Bharat (TBS); Kim Marshall
Subject: RE: IESO Market Accounts

This message has been archived. View the original item

Here is a listing of the market accounts which we developed for our Audit Committee which you may find helpful.

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, O

Attachments:

Item 7(iv)Market Account Definitions.docx

(32 KB)

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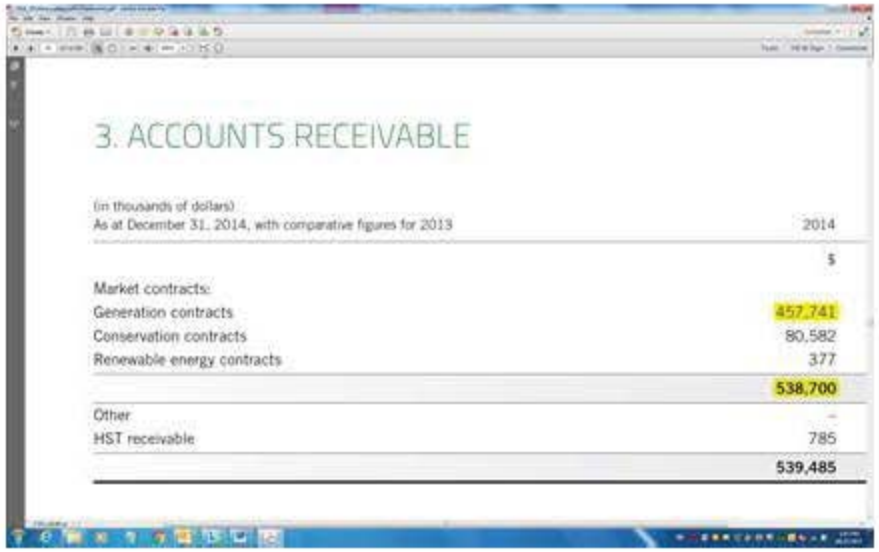
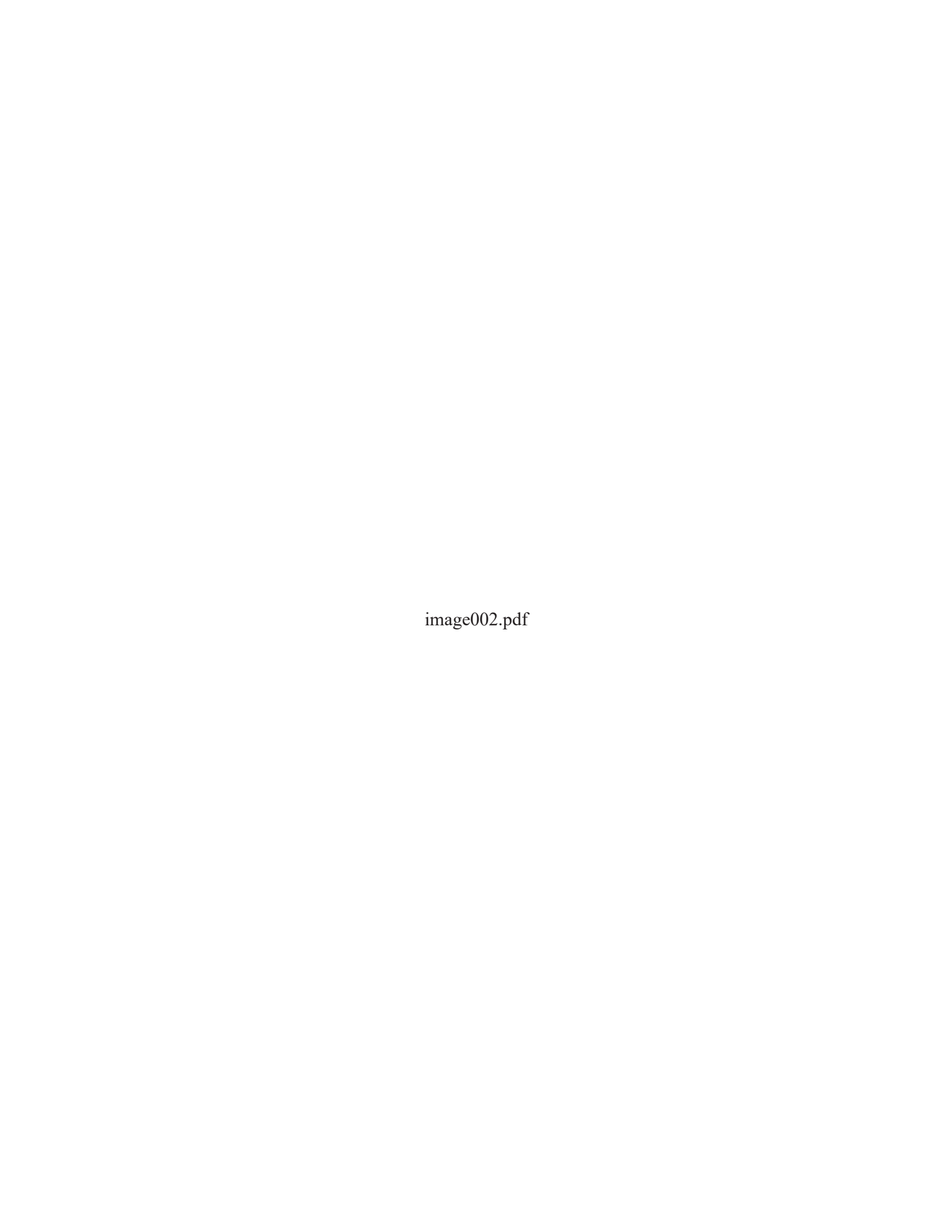
image001.pdf



3. ACCOUNTS RECEIVABLE

(in thousands of dollars) As at December 31, 2014, with comparative figures for 2013	2014
	$
Market contracts:	
Generation contracts	457,741
Conservation contracts	80,582
Renewable energy contracts	377
	538,700
Other	–
HST receivable	785
	539,485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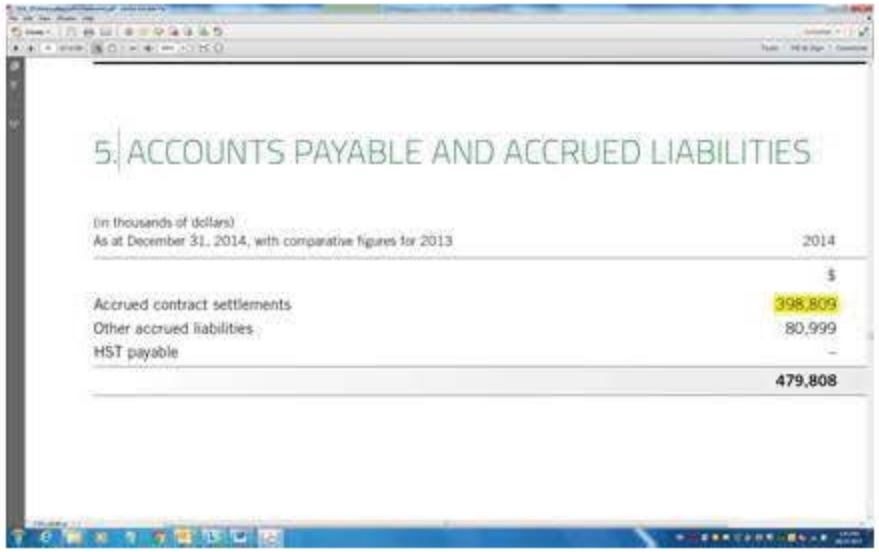

5. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

(in thousands of dollars) As at December 31, 2014, with comparative figures for 2013	2014
	$
Accrued contract settlements	398,809
Other accrued liabilities	80,999
HST payable	–
	479,808

RE_ IESO Market accounts.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
CC: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: IESO Market accounts
Date: Friday, August 25, 2017 11:02:10

Can you please give me a quick call?

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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From: Patel, Bharat (TBS) [mailto:Bharat.Patel3@ontario.ca]
Sent: August 25, 2017 10:56 AM
To: Susan Nicholson
Cc: Kim Marshall
Subject: IESO Market accounts

Susan,

Can you provide brief explanation and analysis, how market accounts jumped from approximately $450M (pre OPA merger) in 2014 to $1.6B in 2016-17?

Thanks,

Bharat

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RE_ IESO change in accounting policy.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: Li, Wendy (TBS) [Wendy.Li@ontario.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO change in accounting policy
Date: Wednesday, May 03, 2017 14:34:27
Attachment 1: image001.png

Taken from Note 2b:

"These financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets (IAM)."

From: Patel, Bharat (TBS) [mailto:Bharat.Patel3@ontario.ca]
Sent: May 03, 2017 2:02 PM
To: Kim Marshall; Susan Nicholson
Cc: Li, Wendy (TBS)
Subject: IESO change in accounting policy

What is IAM stand for?

In January 2016, Independent Electricity System Operator (IESO) changed its accounting policy regarding the recognition of market accounts assets and liabilities on its financial statements, and to adopt rate regulated accounting. The change is made to better reflect the assets and liabilities and amounts due to and from market participants held by IESO on behalf of IAM at year end. This change has been applied retroactively and as a result the IESO's 2015-16 comparative financial statements were restated for presentation changes. There is no impact to the accumulated deficit or revenue and expense as the IESO is not party to these transactions as part of market rules. The impact of the IESO's adoption of rate regulated accounting is reflected in the opening accumulated deficit.

Thank you,

BHARAT PATEL, CPA

Manager (Acting) – External Reporting

Office of the Provincial Controller Division |Office of the Treasury Board |Treasury Board Secretariat

7 Queen's Park Crescent, Frost South, 2nd Floor, Toronto, ON, M7A 1Z5

Phone: (416) 326-7860

Bharat.Patel3@ontario.ca

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image001.pdf

TBS

RE_ IESO change in accounting policy-fiscal impact.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: RE: IESO change in accounting policy-fiscal impact
Date: Monday, May 08, 2017 12:47:17

Please give me a quick call.

From: Patel, Bharat (TBS) [mailto:Bharat.Patel3@ontario.ca]
Sent: May 08, 2017 12:24 PM
To: Kim Marshall; Susan Nicholson
Cc: Petsche, Nadine (TBS)
Subject: IESO change in accounting policy-fiscal impact

Kim/Susan,

Can you please provide fiscal analysis for 2016-17 financials if IESO has to prepare its financials under status quo method (2015 accounting policy) vs. new adopted accounting policy (2016)? We would like to know what would be fiscal impact under current accounting policy (2016 policy) vs. what it would have been without the change (2015 policy).

Please provide this analysis by tomorrow morning as Cindy need this analysis for her Wednesday's SOC briefing.

Thanks,

Bharat

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To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO change in accounting policy-fiscal impact
Date: Monday, May 08, 2017 12:57:03
Attachment 1: 2016-2017 OGO Report (from IESO)

Bharat – please find attached the 2016-17 financials for consolidation that were sent to the Ministry of Energy last Wednesday. They contain 2015-16 information which has been restated for the accounting policy change.

Please let me know if this is the level of detail you were looking for.

Thanks, Susan

From: Patel, Bharat (TBS) [mailto:Bharat.Patel3@ontario.ca]
Sent: May 08, 2017 12:24 PM
To: Kim Marshall; Susan Nicholson
Cc: Petsche, Nadine (TBS)
Subject: IESO change in accounting policy-fiscal impact

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2016-2017 OGO Report (from IESO).pdf

From: Natalie Schaus [Natalie.Schaus@ieso.ca]
To: Zhao, Yiyun (MEDG/MRIS) [SOM2.Yiyun.Zhao@ontario.ca]
CC: Chan, David (ENERGY/MEDEI/MRI) [David.Chan@ontario.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; Sadasivan, Asokan (MEDG/MRIS) [Asokan.Sadasivan@ontario.ca]
Subject: 2016-2017 OGO Report (from IESO)
Date: Wednesday, May 03, 2017 16:43:00
Attachment 1: Final 2016-17 OGO template (Hyperion version) (April 07_11.45 AM)v2.xlsx

---

Hello, please find IESO's submission of the OGO Report for 2016-2017.

The English version of IESO financial statements are located at this address:

http://www.ieso.ca/corporate-ieso/corporate-accountability/financial-reporting

We will forward a French version as soon as it is available.

Regards, Natalie

RE_ IESO change in accounting policy-fiscal impact.rtf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
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RE_ IESO change in accounting policy.rtf

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To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: Li, Wendy (TBS) [Wendy.Li@ontario.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: IESO change in accounting policy
Date: Wednesday, May 03, 2017 14:34:27
Attachment 1: image001.png

Taken from Note 2b:

"These financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets (IAM)."

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Sent: May 03, 2017 2:02 PM
To: Kim Marshall; Susan Nicholson
Cc: Li, Wendy (TBS)
Subject: IESO change in accounting policy

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Thank you,

BHARAT PATEL, CPA

Manager (Acting) – External Reporting

Office of the Provincial Controller Division |Office of the Treasury Board |Treasury Board Secretariat

7 Queen's Park Crescent, Frost South, 2nd Floor, Toronto, ON, M7A 1Z5

Phone: (416) 326-7860

Bharat.Patel3@ontario.ca

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image001.pdf

TBS

RE_ IESO f_s reflecting RRA.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: IESO f/s reflecting RRA
Date: Tuesday, February 14, 2017 17:43:29

I have asked our audit partner matt for a call, will raise with him, thx

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: February 14, 2017 4:41 PM
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall
Cc: Veinot, Cindy (TBS)
Subject: IESO f/s reflecting RRA

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Kim/Michel,

Cindy and I chatted further on the opportunity to pursue rate regulated accounting (RRA) in the IESO's 2016 f/s.

In contemplating IESO adopting RRA as an OGO, it would strengthen the case to reflect the market books as well (since they would have to reflect RR accounting in order to fairly present the IESO's balance sheet and operations).

Your thoughts?

Nadine

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RE_ IESO white papers draft #6.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Picard, Michel [mpicard@kpmg.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: IESO white papers draft #6
Date: Thursday, February 23, 2017 10:12:53

Nadine, I appreciate why this is a powerful statement for the memo, yet I am not comfortable putting this in before it has gone through our audit committee

Regardless of whether the GAM initiative proceeds, the IESO will change its accounting policies to permit the recognition of the economic impacts of rate regulation as from

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 23, 2017 7:43 AM
To: Kim Marshall
Subject: FW: IESO white papers draft #6

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Can you approve her comments.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, February 23, 2017 7:18 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: IESO white papers draft #6

Hi Michel.

Additional points for your consideration.

N

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Re_ For your attention.rtf

From: Petsche, Nadine (TBS) []
To: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]
Subject: Re: For your attention
Date: Thursday, March 23, 2017 09:23:31

To clarify, only the principles should be attached and referenced as relevant for consideration, not the detailed directive and any commentary suggesting that the Trust has to consider the details in the directive itself. N

Original Message
From: Schwab-Pflug, Emma (ENERGY)
Sent: Thursday, March 23, 2017 9:18 AM
To: Picard, Michel; Petsche, Nadine (TBS)
Subject: RE: For your attention

Thanks Michel, to clarify we can leave the Province's travel meal and hospitality directive an addendum and state:

...the Board of Trustees have general regard to sorts of limitations as are set forth in the “Travel, Meal and Hospitality Expenses Directive of the Province” specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex."

Nadine, I thought you were comfortable with this originally, so it sounds like we're good.

From: Picard, Michel [mpicard@kpmg.ca]
Sent: Thursday, March 23, 2017 9:15 AM
To: Petsche, Nadine (TBS); Schwab-Pflug, Emma (ENERGY)
Subject: RE: For your attention

All my contracts with the Province stipulate the same requirements. I do not think that this is an issue.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, March 23, 2017 9:08 AM
To: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: For your attention
Importance: High

KPMG
Would absolutely agree. Copying Michel on this note so he can confirm. N
Original Message
From: Schwab-Pflug, Emma (ENERGY)
Sent: Thursday, March 23, 2017 8:43 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine, we're discussing. I'm asking Musab but would you know if KPMG weighed in on this also? It will help inform decision to accept risks.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)

Sent: Thursday, March 23, 2017 8:34 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: RE: For your attention

Emma,
You likely saw the note regarding the TMH directive. It's an important point that I was sure we had covered in length. Hoping that you/Musab/Usman can confirm ASAP so that Stephen can make the changes. n

-----Original Message-----
From: Schwab-Pflug, Emma (ENERGY)
Sent: March 23, 2017 8:05 AM
To: Petsche, Nadine (TBS)
Subject: Re: For your attention

Thanks Nadine - fyi, I'm at an all day meeting at the IESO today, will be on email and on call. Could you also keep Usman and Musab informed of new items? Thanks again for all your help.

- Emma

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Petsche, Nadine (TBS)
Sent: Thursday, March 23, 2017 8:02 AM
To: Schwab-Pflug, Emma (ENERGY)
Subject: Fw: For your attention

Hi Emma. Just to keep you in the loop. N

Original Message
From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Thursday, March 23, 2017 6:25 AM
To: ASHBOURNE, STEPHEN
Cc: PRESTAGE, JA
Subject: Re: For your attention

Hi Stephen. I understand, but the reference noted still suggests that compliance with the directive itself (in full form) would be required. It should just be modified to refer to reference the principles as opposed to 'limitations in the directive' which is very different. N

Original Message
From: ASHBOURNE, STEPHEN
Sent: Thursday, March 23, 2017 6:04 AM
To: Petsche, Nadine (TBS)
Cc: PRESTAGE, JA
Subject: Re: For your attention

I think we're no longer contemplating attaching the full Policy. We dropped in your few summary points describing the "principles" in a generic way - did you see that?

Stephen R. Ashbourne
Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Mar 22, 2017, at 8:46 PM, Petsche, Nadine (TBS)
<Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>> wrote:

Stephen,
I'm just updating my control analysis based on the latest version of the Declaration and the TPA. I came across the following extract which also needs to be revised to reflect reference to 'principles' of the directive only. Sorry for the late notice. Just saw it now. n

Declaration

Power to Pay Trustee's Fees. The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

_____

[cid:imagea0b2fc.GIF@b9e8d051.4397a308]

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx>

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CC: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: For your attention
Date: Thursday, March 23, 2017 09:07:47

KPMG
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Dir: 416-863-3086<tel:416-863-3086>

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I'm just updating my control analysis based on the latest version of the Declaration and the TPA. I came across the following extract which also needs to be revised to reflect reference to 'principles' of the directive only. Sorry for the late notice. Just saw it now. n

Declaration

Power to Pay Trustee's Fees. The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

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Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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